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PRINCIPLES

OF

INSURANCE LEGISLATION

BY

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THE NATURE AND SCOPE OF INSURANCE.

Insurance is the equalization of fortune. The definition may sound like a mere commonplace; but it is no such thing. The line of demarcation is just there. Insurance prevents those inequalities, which are induced by misfortunes to individuals, by spreading the loss over a larger surface, by dividing it among a larger number; by this very means also, the inequalities, caused by the good fortune of individuals, are sensibly reduced by their contributions to cover the common loss, by their premium payments. The kinship between insurance and gambling is close; they both deal with the science of average, applied to chance. And so far as that science is concerned, aside from the hazard arising from men's conscious efforts to gain which is known as the moral hazard, there is no distinction whether a company bets you that your house will not burn or that your neighbor's house will not burn.

But there is a difference, nevertheless, between those two transactions. The difference is that in the former case you have nothing to gain; you are merely striving to avoid loss or, more accurately, to share the risk of loss, common to such property. In the latter case, on the contrary, you will not only lose if the house of your neighbor does not burn, but you will also gain if his

house does burn. The latter transaction is, therefore, pure gambling, undertaken only for purposes of gain without giving an equivalent; its tendency would be to increase the inequalities of men's conditions, to magnify instead of modify the inequalities imposed by the chances of nature and society. The former transaction is, instead, pure insurance, undertaken only for the purpose of escaping instead of incurring a hazard; its tendency is to minimize the invidious inequalities which mere chance and not desert occasions. And beneath all this, at the very bottom of economics and sociology, lies the distinction of public policy, the distinction between that which makes men foes preying upon one another and that which makes them allies, co-operating with each other, between competitive isolation and solidarity.

The very first office of insurance legislation, then, should be to make this distinction clearly. The basis upon which the distinction must be predicated, is that of insurable interest, of indemnity. It is the business of the State to permit and to encourage the co-operation of its citizens in applying the laws of average to those chances which they are by exigencies already existing and beyond their control compelled to take, for the purpose of distributing the loss. It is the business of the State to discourage and prohibit all enterprises which apply the laws of average to create chances and by hopes of great gains tempt inconsiderate persons to increase the necessary hazards of life. Broadly and generally speaking, all honestly managed institutions of the former sort should be fostered by legislation; and, without exception, every concern of the latter stripe should be put down.

We are yet in the infancy of insurance which is, more than all other modern inventions, the child of our modern civilization. Its development is both toward more perfect form in fields already occupied and toward increased

comprehensiveness, covering ever fresh fields. It is, itself, a practical outgrowth of a doctrine which was for a long time relegated to sentimental moralizing and deemed utterly impracticable. That doctrine took its most simple and perfect form in the command: "Bear ye one another's burdens." For centuries, this was interpreted by persons to mean: "Bear ye others' burdens," and did not convey to the mind the idea of a lighter but, instead, the idea of a heavier burden. It remained for our hard-headed age to evolve from the true meaning of the command a system which knits men together for purposes of mutual burden-bearing to a degree which was absolutely unknown in the days of mere sentimentalizing about brotherhood. At the same time the autonomy of the individual is preserved and, indeed, protected; the sense of security makes him more a man and more capable of independent labor. The scope of bearing others' burdens instead of sharing all burdens, is sensibly lessened and almost the complete abolition of the humiliation of charity may one day be expected from the extension of the principles of insurance into practice in all fields where there is loss and the risk of loss which overwhelms the individual

The fields already occupied or being occupied fall naturally and easily into general classes or divisions. First, among these, is insurance against those misfortunes which directly touch the person in his own body or occasion loss to another person because of his death. In this group would be included all forms of personal accident, health, old age and other permanent disability and life insurance. For convenience's sake and because it accurately designates the class, let this group be known as Personal Insurance.

Next in order of nearness to the individual is insurance against loss of property possessed by him, through mis-

fortunes which destroy it or impair its value. This would include fire, lightning, windstorm, hail, marine, plate-glass, and other like forms of insurance. This may be named, with less distinguishing accuracy, however, Property Insurance.

Another sort of hazards now covered by insurance consist in liabilities for injuries occasioned others by the negligence, tort or even crime of the insured. All forms of employers' liability, public liability, elevator and steam boiler insurance so far as they cover injuries to persons, and the like, come in this category. It may be appropriately named Liability Insurance.

Insurance of property-owners against losses or injuries because of the negligence, insolvency or even crime of others forms yet another division. Included in it are surety, credit, burglary and other similar forms of insurance. The selection of a name for this group is most difficult, as it is well toward the border of insurance development. Perhaps, the English legal term "Tort," which means a wrong, might be applied to it.

Beyond this class and yet later in development are several divisions, as yet in a merely formative state and not clearly recognized in all cases to be of the nature of insurance. Among these are title insurance and the peculiar application of the rules of average in debenture companies and building and loan associations, the kinship of which to insurance has not been clearly recognized and set forth.

In a code of insurance laws, each of these classes and in fact each branch of insurance in each class should be provided with ample provisions for its proper growth and development into the most serviceable instrument possible. First in the order of necessity is permissive or enabling legislation which makes possible, or at least lawful, the organization of companies or societies to carry

on the business of insurance. The absence of such legislation, and yet more often the presence of prohibitive legislation, have been effectual preventions of advance in many directions where advance was called for. Legislation of this nature should be carefully planned with a view to the possible requirements of the future. It is the foundation upon which the house is to be built and it should be solid and true to correct principles. Unless it is broadly conceived and intended for the public good, it is likely to be a curse instead of a blessing. Rarely has such legislation been dictated by existing institutions in their special interest that it has not proved an injury to the public, who were not so well served, because of laws supposed to be for their benefit.

The public have usually retaliated, as is but natural, by restrictive legislation. They recognize the predatory instincts of existing and often autocratic companies and they seek to hold them within proper bounds. No field of legislation is so tempting to the new lawmaker as that of restriction; the "thou shalt not" is the novice's conception of law. Consequently all insurance companies and societies in this country groan under a grievous burden of restrictions, never the same in any two States. The fact that companies protest warmly against these restrictions is commonly considered excellent proof that the restrictions are just what they ought to be, so unfavorable an opinion have the people of the public spirit of insurance managers. Notwithstanding the popularity of this view, it is true that in no branch of legislation would it be wiser to stay the hand than in restrictions upon insurance companies. There are but two things which justify interference with the right of free contract in insurance matters. These are, first, to make sure that the element of indemnity is never lost sight of and that gambling is not part of the transaction, and, second, that

nothing in the conduct of the business is against public policy. It is also proper for the State to require that all contracts of insurance follow a certain order in their provisions and stipulate all conditions in clear type in their natural sequence. When this is done and proper restrictions are observed, there is no excuse for further interference.

Regulative legislation, though closely akin to restrictive, is different in the important particular that its provisions are guiding rather than restraining. Included in this very important class of laws are statutes covering the government of companies by the persons interested, the manner in which funds may be invested and the purposes for which they may be disbursed, the means of testing solvency, the subject of public reports and various similar subjects. The things to be desired in this sort of legislation are that it should devise means by which the views of the majority of the persons interested should be effective in the actual management, that it should grant the utmost opportunity for choice in the matter of investments compatible with safety, that the standards of solvency should be such that no really solvent institution would be adjudged impaired and that the fullest publicity be given to all the affairs of the institutions, holding back nothing which the public has a right or a reason to know.

It will be observed that the field of insurance legislation is a very broad one. It would require a good volume to cover the subject of legislation for one sort of insurance in a thorough and exhaustive manner. No such a task will be undertaken here. All that can be hoped for in a work of this character is a plain and concise indication of the fundamental principles from which all legislation should proceed.

GENERAL ENABLING STATUTES.

Without the enactment of any laws, whatever, the right of making insurances, in the absence of prohibitive statutes, belongs to individuals or partnerships, just as does the right to conduct any other business which is not in conflict with public policy or in controversion of law. It is a fact, well known to all students of the history of insurance, that, in the beginning, all insurances were undertaken—underwritten, the old expression was—by individuals. These individuals must have been of a very enterprising, speculative, daring character, much disposed to take chances; for, without anything like reliable information as to the nature and proportions of the hazard they were encountering, they bet freely large sums against very small ones, their only advantage being that they were also stakeholders. The fact that men could be found with so adventurous temperaments, may seem to us significant; insurance had its origin in the gambling instinct, for these men acted through pure love of hazard and without insuring enough persons to make anything like an average. In fact, so hazy were their ideas of the real nature of what they were doing, that to assume more insurances was thought to be increasing the risk instead of diminishing it by enhancing the probability of securing an average. It is, therefore, true that

the business of insurance was originally undertaken on the part of the insurers through a mere love of risky adventures. So far as they were concerned, it was as purely gambling as was any other game of chance; and as it was then carried on, its legality and propriety from the standpoint of the insurer were just as questionable as were the legality and propriety of roulette.

But consideration of the side of the insured puts an entirely different face upon the transaction. When persons gamble with dice, for instance, what one wins, another losses; each would lose nothing and each would win nothing if they did not play. On the contrary, when one man insures another against the loss of property, it does not follow that what one loses the other gains; the gain by the insured could in any case be but relative—that is, relative to the greater loss he would have suffered, had he been without insurance. Had there been no insurance, he would still have been compelled to run that risk; what he has done by insuring, is not to create a chance for gain, but avoid a chance of loss. In other words, he has made use of betting, to "hedge," as our friends of the green cloth would call it. Since the wheat market has become the plaything of speculators, honest dealers in breadstuffs, such as millers, are compelled to make use of the privilege of "selling short" to avoid a fall in the market before the goods which they buy can be prepared for the market; this not for the purpose of speculating, but for the purpose of preventing their purchase being a speculation and their legitimate profits being swept out by a mere turn of the market. They insure their purchases by selling short an equal amount. This is also of the nature of a "hedge;" the only real objection to it on corn exchanges and in insurance as well, is that, so far as the other party to the contract is concerned, it is gambling pure and simple.

To explain how it might be rescued from that difficulty in the matter of grain deals is not the purpose of this paper; so far as insurance is concerned, there is but one way to relieve the transaction of this gambling character. That is, to change hazard into approximate certainty by so increasing the number of risks as to make the losses form an average upon the regularity of which it is possible to rely. Whatever may have been the propriety of questioning the right and wrong of individual insurances in the days when men assumed but few such risks, there is no occasion for questioning the unmixed benefit which flows from insurance given by firms or companies which have so extended their business that it is no longer a matter of risk at all.

Insurance needed just that growth and development to make it thoroughly practical. And it was this necessity for a large number of risks as well as for permanency on the part of the insurer, which made it advisable to transfer the business of insurance from individuals to companies. This came about gradually; in fact, the limited-liability stock company system did not really flourish in any line of business until within the present century. Even now in most nations, the power to act as a body corporate is not given except by special act of the sovereign power. This was true, also, in this country until we found that any charter could be bought; and so helped to clear our legislative halls from corruption by removing the temptation through the enactment of general corporation laws. But it was a long time before insurance developed to the point where the absence of such laws was an obstacle. When it passed beyond the stage of mere occasional betting between individuals and became a transaction which every prudent man thought wise, it was still relegated to individuals who drew together—in London, about Lloyds coffee house—and

underwrote, each as much of the risk as he saw fit. Neither of these, however, became surety for the others; each was responsible for his own engagement and no more.

It was inevitable that such a system should give way to partnership and stock-companies. Indeed, the organization into companies to carry on the business of insurance antedated the general formation of limited-liability companies. The earlier insurance corporations were, in effect, partnerships and with unlimited liability. One of the oldest London companies, the Sun Fire Office, kept that form until within this decade, refusing to make its affairs public and in every way conducting itself as a mere association. But the need for large capital, the desirability of publicly attesting their strength and solvency and the consideration that an insurance company should not pass out of existence like an individual, all conspired to make the organization of companies the natural thing to do. The undertaking of the insurance of lives and annuities made this more requisite; for it was ridiculous to make an insurance of lives depend upon a life which might be less secure than any of them. And, though the insurance might be a charge against the insurer's estate, it would keep the affairs of such estates in a frightfully mixed state. The process of probate has ever been slow enough and complicated enough without that.

Two forms of companies can be used for the purpose of effecting insurances. The first and simplest to consider is that of a company for private profit, composed of persons who engage in the insurance business as did individual insurers aforetime, except that they seek to avoid the hazard and uncertainty of individual underwriting by covering a much larger number of risks. This is the common form of stock company with which we are

acquainted. The other form is that of a mutual association in which the insurers are also the insured. It will be observed that the safety of the transaction of insurance depends upon the sufficiency of the premium charged and the ability to obtain and retain risks enough to preserve an average. When these things are accomplished, the presence of capital adds but little to the safety; indeed, it is principally valuable as an earnest that there will be good and safe management, because the managers have much at stake. The number of risks, sufficient to secure an average, is supplied by the insured; it follows that if a sufficient number of these will cooperate, pay adequate premiums and secure for themselves economical and efficient management, they can perform the function of insurance as safely as can a stock company and save at least the profits which the stock-capital would absorb. These mutual associations may be without limit of liability, but the usual practice is to limit the liability of the members to the premiums paid or to an additional sum, specifically contracted for.

It is the office of enabling statutes to grant the power to organize such companies, both stock and mutual. While the right to carry on the business as an individual, a firm or a syndicate, is, in the absence of prohibitive statutes, granted to every person, it requires special legislation to give to the same individuals corporate powers to carry on the business as a company. The usual course of the legislatures has been to enact such laws, just as occasion called them forth. Thus a law permitting the organization of fire insurance companies would be enacted when there was a demand for such legislation of which the legislature was bound to take notice. Generally, such laws have been granted grudgingly or according to the dictation of persons who were interested in their passage. The consequence is that every new devel-

opment of the principle of insurance, of the application of the laws of average to the reduction of hazard to the individual, has had to fight its way without warrant of law until big enough and popular enough to secure the enactment of laws which permit it to serve the public. This is the history of all such movements.

All of which suggests that enabling statutes are imperatively demanded which will place the whole business upon a broader foundation and will give free play to the inventive geniuses of insurance to devise and put into operation new schemes for the protection of individuals from hazards which they are, by the nature of things and the constitution of modern society, compelled to take. These statutes should authorize the organization of companies and associations for the purpose of insuring against any injury or loss, so long as not against public policy. There is no occasion for special enabling statutes for each branch of insurance; indeed, the special statutes by their exclusive character often effectually prevent the development of insurance in directions which it would otherwise take. In instance, observe the recent legislation in many States, denying to fraternal life insurance societies the right to carry on a sick benefit business other than in local lodges. Perhaps, no branch of the work of these organizations promised to confer so great a benefit upon the people as the very thing which was thus cut off through the influence of certain of the older societies which had no such plan. Such might, with greater accuracy, be called disabling legislation.

One objection to the plan of having one general enabling statute to cover the whole field of insurance enterprises, is that the result would be that one company would endeavor to cover too large a field. In the minds of many persons, there is a grave doubt of the wisdom of undertaking more than one form of insurance in one

company. There is some reason for this opinion, no question ; though among the most successful and reliable insurance companies in the world are those which cover branches of insurance so widely divergent in character as life and annuity on one hand and fire and marine on the other. The fact is, however, that dangers of companies undertaking too many lines of insurance belong principally to the formative stages of the business. The evils are also not of a very formidable sort and consist for the most part in inefficiency of management and want of enterprise, arising from the divided attention. But the evils of refusing to companies the privilege of making those combinations which wisdom approves, are much more serious. The wonderful development of several entirely new branches of insurance by the Fidelity & Casualty Co., of New York, is an evidence of the gains to be realized by permitting a wise freedom in this regard ; and it is not to the credit of our solons that this company had to fight every inch of the way against adverse laws and even now cannot exercise all its powers in every State. The only thing that saved it anyhow, was the fortunate word "Casualty," which really includes everything that could be insured against and has been construed to cover practically all forms of insurance not already accurately named. The benefits to be derived from the free combination of all forms of personal insurance, such as life, loss of member, temporary disability, permanent disability and old age, can hardly be over-estimated. Yet it is doubtful whether a charter could be to-day procured for a company to deal in this combination ; and it is sure that any such company could not obtain admission into a half-dozen States. The law, in this and all other respects, should permit whatever is not clearly against the interests of society, against public policy. The permission should not be grudging

and limited, but free and encouraging; because the whole institution of insurance is in the widest sense beneficial. A general statute is needed permitting the organization of both joint-stock and limited-liability mutual companies, for the transaction of any insurance against loss through the application of the principles of average; the only restriction which public policy suggests, is that of insurable interest, forbidding the promising to pay any sum to any person upon an event which does not occasion him a loss at least equal to the sum paid. Such a provision will make it certain that the contract is never one to increase hazards, but always one to diminish and modify them which insures that the transactions will be beneficial and not deleterious to society.

RESTRICTIVE STATUTES.

The novice's conception of law is expressed in the command: "Thou shalt not!" It reminds one of the doctrine of original sin and the Calvinistic theology, which bristles with prohibitions. According to that conception, all things are evil and need to be jealously restrained lest they run wild with mischief. It is the natural creed of the simple, the untutored, the timorous. Almost all the bills which inexperienced legislators introduce or advocate are of this sort.

Enabling statutes should discount the necessity of much of such legislation by broadly, but accurately, designating the beneficial objects to be attained and granting just the powers required to be attained and no more. Such legislation, when intelligently drawn, should so clearly indicate the whole course of action to be pursued, so firmly define the principles on which the work must proceed, that misconception, and consequent abuse of powers, would be nearly if not quite impossible. Equally impossible would it then be for frauds to conceal themselves beneath the more or less ambiguous terms of the law. To this end, the distinction made should be vital and fundamental, winnowing the chaff from the wheat. It is not necessary that the distinctions go too much into detail; details confuse and often defeat

the purposes of enabling Acts. If such laws are clear, definite and comprehensive, restraining statutes will be found to be of minor importance.

The principal office, then, of restrictive legislation is to supply, by patching, the deficiencies of enabling laws. It will be found that where laws of the latter sort are involved, ambiguous and uncertain in their provisions, there has been a great popular demand for restraining measures to prevent a wanton misuse of powers. Thus by accretion from new bills, amendments and court decisions the mass becomes greater and greater, and, commonly, confusion is the more confounded. The more or less inharmonious and conflicting provisions act as so many traps for the unwary and loop-holes for the designing. The multiplicity of demands is also only suited to present conditions and forms of business, and every new and valuable invention has to work its way through a very maze of difficulties. The imposition of restrictive additions to faulty legislation is like poulticing a blood disorder; what is needed is a radical cure.

Yet, when the best possible, in the way of broad enabling laws, has been accomplished, there is still room for many restraining statutes. Each form of application of the fundamental laws brings with it a train of incidental possibilities of evil, which cannot and should not be provided against in the fundamental laws themselves. It is a general principle of law, that a corporation has all the powers definitely granted to it, and also all powers necessary for the accomplishment of the object for which it was incorporated. In such matters there is evidently reason for great latitude, which however, may be abused. It is to provide against such abuse that restrictive laws are mainly desirable. For instance, if there were a general enabling statute for the organization of insurance corporations of all sorts, the law merely specifying the

nature of insurance, the application of this law to mutual companies, to personal, property and other forms of insurance would call for carefully considered restraining statutes, fitted to the peculiar character of each case.

In the matter of general restrictions, applicable to all forms of insurance, certain broad provisions are indicated. The nature of insurance makes its transactions peculiarly subject to the danger of crossing the line into the realm of mere gambling. It is but a step from "betting to hedge" to "betting to win;" and the step may be very easily and even unconsciously taken. A familiar mode of converting an insurance into a gambling transaction is by making the same in favor of a person who is not financially interested to the extent of losing upon the occurrence of the event insured against an amount at least equal to the sum insured. This is want of insurable interest or at least of sufficient insurable interest, and is a danger common though in varying degree, to all insurances. It may well be provided against by a general restraining statute which may in turn be modified or defined when necessary by special statutes covering special forms of insurance.

Another general restriction which might be desirable is a prohibition against engaging in business other than insurance or in forms of insurance which are conflicting in nature or, possibly, in forms of insurance which have no necessary relation to each other. The wisdom of the last inhibition is indicated by the fact that the management of a corporation should be homogeneous and united, which can scarcely be the case when businesses which are widely diverse in nature are undertaken. Moreover, the objection of too great concentration lies; though care should be taken

in this connection not to embarrass combinations which might be of the greatest utility to the public.

Another general restriction should be that, with certain exceptions, which may be taken up in detail hereafter, no person should be insured against injuries which are self-inflicted or against pains and penalties for crimes imposed by the sovereign power. Whether pains and penalties for torts which are private wrongs almost amounting to crimes, ought to be covered by insurance remains also to be considered; but the question will come up in a more concrete form hereafter in this series.

Possibly another prohibition should lie against voluntary payment or compromise of fraudulent claims on the ground that to encourage such frauds in a matter relating to the destruction of property or lives is especially dangerous to the well-being of the State. Witness, for instance, the tremendously increased fire waste in this country because, not of careless adjustments, but of inadequate inquiry into the cause of fires and the disposition to compromise rather than fight. Witness, also, the epidemic of child-murder in the crowded tenement districts of England, caused by the bait of industrial insurance as there conducted. But with the exceptions of these general provisions, restrictive laws relative to insurance must needs be partial in their application, and even the more general prohibitions require much modification to suit some cases.

RESTRICTIVE STATUTES.—LIFE INSURANCE.

The laws governing a life insurance company should be such as would enable it to do everything proper to its office in society, and to restrict it from doing anything which would interfere with the performance of its proper function. That office or function is to cover from loss because of contingencies pertaining to living or dying. These contingencies are of just two sorts. There is the hazard of dying during the productive years of life, and the hazard of living beyond the productive years of life. This may seem like assuming that to live beyond the age when productive labor is possible is of itself a misfortune, to speak of that as a hazard to be insured against; and, indeed, there may be much reason to assume this, even when old age is unaccompanied by poverty. But the only view of hazard on insurance is the financial, and what is meant by a hazard is always the possibility of financial loss when the word is used in this connection. Death is not a contingency, strictly speaking, but a certainty; old age is also a certainty subject to the one risk that death may earlier intervene. The only uncertainty about either one of these things is the time of its occurrence and it is that uncertainty with which life insurance has to deal.

The laws, then, should first of all enable a company to

insure against both of these hazards as completely as possible. It should then restrict it from operations of any nature whatsoever which might interfere with the complete success of the insurance. On the general principle that any class of operations which did not contribute to the success of the insurance, stands in the way of that success by deflecting the energies of the management into another channel, it would be proper to restrict the operations merely to these departments of insurance. But such a course is not necessarily indicated and might be inadvisable. An example, however, of the need of just such restriction may be seen in the circumstance that several of our life insurance companies are becoming mere investment companies of a rather doubtful character, that some of the companies have never played the part of life insurance companies at all in consequence, and that as a class all the companies were so misled by the craze for investment that their failure to supply insurance occasioned the formation of a number of crude makeshift societies, to perform the function which the regular companies failed to perform.

It is clear, upon reflection, first that from a purely financial standpoint, the only contingency about death is that it may take place during the years when a man may reasonably expect to be productive. Death, taking place after the expiration of that period, is not a financial loss and is, therefore, only in a very limited way a subject for insurance. For the purposes of insurance against death during the productive period, there is no absolute necessity for any investment as it could be furnished on a yearly renewable plan; but there is also no reason why investment of funds should not be employed to furnish the convenience of level-premium or limited-premium insurance. There are two contingencies relative to the disabilities of old age, one of which is the possibility of

prior death, and the other the time when one actually becomes permanently disabled. If there were no contingencies, there could be no insurance and provision for old age would be a matter of mere saving and investment. As it is, insurance against old age remains principally a matter of investment, modified by the two contingencies. It is at present the custom of all the regular companies to consider only the contingency of prior death in dealing with old age insurance which is offered in the form of endowments or fixed annuities only. The co-operative societies are, in this matter also, in advance, several of them having already incorporated into their contracts provisions for total disability insurance although with their usual rashness they have omitted taking the new element into account in making their rates. There is another office now performed by the life insurance companies which, while its character as an insurance transaction is doubtful, is, perhaps, not inappropriate; it is the accumulation and equalization of estates for men who have passed the productive period. All paid-up insurance partakes of this character when the insured passes the productive period of life and all premium-paying insurance also partakes largely of this character at the same age of the insured, owing to the heavy reserves. The propriety as well as the wisdom of issuing any sort of life insurance policies with payments extending beyond this period is exceedingly questionable; but the mere leaving of an estate to be accumulated and equalized according to the average future lifetime of men, now at the assured's age, does not seem objectionable.

The acceptance of funds for investment for other purposes than the foregoing seems clearly improper and certainly exceeds the proper office of a life insurance company. It really does not matter at all that the

chances of living or dying are mingled in the calculations and the transaction. The issuance of a pure tontine or pure endowment policy, which is a promise to pay money only in the event of survival, is not an insurance contract unless there are special circumstances which render the insured subject to a financial loss if he thus survives. Even then unless the term were a very long one, pure investment without modification by the risk of survival would answer nearly as well. The combination of this pure endowment policy with term insurance, so that the principal sum is payable at death or upon survival, alters the nature of the contract so that it is not utterly immoral; but the immense augmentation of the investment element is of itself an unmixed evil. Especially is this the case when, as has been the fact for many years past, the stress of life insurance field-work is placed upon the investment element as if an endowment or tontine policy were to be desired for investment purposes only. The diversion in this direction has also resulted in great increase of expenditure and in greater cost and difficulty in procuring insurances while the same have proven of very short duration when once procured. If there were no other reason for abandoning this course, the fact that such investments are tremendously handicapped should be sufficient. But there are other reasons not only why companies should voluntarily retire from a field of operations, so foreign to their proper functions and for which they are so poorly suited, but also why in the interests of the public they should be estopped from continuing in this course. The most potent reason for restraining them is that, so far from there being any real development of the functions of life insurance among regular companies during the prevalence of this craze, there has been a retrogression accompanied by unexampled extravagance, both of which were rendered

possible and even necessary by the departure from furnishing insurance suited to the requirements of the people. The first and most important restraining statute in life insurance, then, is a law prohibiting the promising of any payment of money except upon the event of the death or disability of the insured. Of course this should not apply to the return of over-payments as dividends. This might compel the revision of the present deferred annuity plans but that would not be an evil in any sense.

Perhaps to a less degree than in any other form of insurance is there necessity for laws restraining the issuance of policies in favor of persons who have no interest of a financial character in the thing or person insured. Especially is this true of insurance on adults who pay premiums themselves and carry the insurance for the protection of persons whom they wish to protect. It is plain that in the most of such cases, the policyholder is a better judge of his own obligations and responsibilities than anybody else can possibly be. In this country, we have many very foolish and very conflicting laws on this subject and much litigation and even double payments of the sum insured have been the result. In some States, a different rule prevails to-day for the policies of regular companies and those of fraternal societies. Other countries have tried the experiment of leaving the matter of insurable interest open and up to this time there have been no evil results, one of the companies of such a country showing the lowest mortality experience yet recorded. At the same time, it seems proper to restrict insurance by one person on the life of another, the beneficiary paying the premiums, to issue only to those who have a clear interest in the insured life; and as it is difficult to make sure that the beneficiary does not pay the premiums in any given transaction, it is, perhaps,

better to enact a liberal law regarding insurable interest which will work no injustice in either case.

There is also less reason to prohibit insurance against loss because of self-imposed injuries than in other forms of insurance, excepting where such injuries produce disability and are thus for the advantage and profit of the insured. The fact that the benefit of a life insurance inures to a third person alters the nature of the transaction and it is the act of the beneficiary which should be held to vitiate the insurance. The proper attitude of the State toward the question of the validity of life insurance when the insured is executed for crime, is a matter for careful consideration. The present practice of the courts is to hold that such claims cannot be valid; but the companies have pretty generally held otherwise by making their policies incontestable. Just what sort of justice it may be considered for a State to deprive a family of their support and then deny them the protection against that very deprivation which they or he had paid for, all as a measure of punishment for him and of protection to society, it is difficult to say. That such a position should be taken, shows how monstrously unjust and barbarous our penal system is which makes innocent women and babes suffer the most severely for the crimes in which they have no part. There would be good reason for legislation prohibiting the issuance of policies, covering only the risk of death by self-inflicted injuries or by execution; there is no occasion for refusing to permit general life insurance policies to cover both of them. Indeed, in the matter of executions, the State would play a more honorable part if it would itself compensate the dependent family of an executed criminal

RESTRICTIVE STATUTES.

OTHER PERSONAL INSURANCE.

Personal insurance, other than life, has for the most part appeared in the forms of accident and illness insurance. These two are closely allied, the latter, indeed, practically including the former. The idea is to provide indemnification for the loss of time, loss of efficiency and the immediate expense, occasioned by either accident or disease in the latter case and only external accident in the former case. The indemnification also comes in at least two forms, suited partially to the character of the injury sustained; the loss of time is indemnified by a weekly stipend, not usually paid weekly, however, but in one sum at the close of the disability; the loss of efficiency when insured against at all, is commonly indemnified by the payment of a specified lump sum, as at the loss of eyes or limbs. Permanent disability is rarely if ever insured against by the same organizations and in the same policy as temporary disability. Insurance against permanent disability is at present principally supplied by assessment life insurance societies. Indemnification against the extraordinary expenses attached to treatment for illnesses or injuries is usually included in the weekly payment and not considered separately. There are however hospital companies and associations

which cover this by an agreement to supply hospital treatment free or in lieu of that to pay for home treatment and nursing.

The only other form which personal insurance has taken was the insurance against loss of situation, a scheme evolved by one of the most ingenious casualty insurance men but which was withdrawn after a very short trial. The desirability of such insurance is manifest but its practicability, except possibly through the agency of gigantic labor organizations, is exceedingly dubious.

Perfect protection of the individual would call for an insurance, indemnifying by a weekly or other periodical payment against complete or partial disability, whether temporary or permanent, the payment to continue so long as the disability continues. The payment should be larger during any period when medical attention, nurse or hospital treatment is requisite, that being one of the contingencies to be insured against. The payment of a lump sum because of the supervention of permanent, partial or complete disability is a crude form of indemnification, adopted because the companies wished to terminate their liability and besides had not the statistics at hand to calculate accurately the reserve necessary to sustain periodical payments.

The laws should foster the development of personal insurance along these lines, so far as possible. The close connection between all of them and life insurance and especially the close connection with old age total disability insurance, mentioned in the last paper, is at once patent and suggests that the two classes of insurance could be supplied by one institution and, possibly, in one policy better and more economically than by two or more institutions and in two or more policies. This has a bearing on restrictive legislation in this way, namely: the present laws generally prevent these forms of insurance being

undertaken by one institution, a restriction evidently unwise and impolitic. In some States the formation of a company to furnish illness or disability insurance is not permitted under the law. There should certainly be no restriction against the furnishing of all these forms of insurance by one company.

Singularly enough, while this is not permitted, the combination of the form of personal insurance, known as individual accident with other forms of so-called casualty insurance, including a variety of insurances of a most diverse character, has been freely permitted. It is possible that personal insurance has not lost by the combination; it would be difficult to prove that it had. But it would be very easy to prove that it has not gained, for certainly no argument can be offered to establish that it has. There is no necessary connection, for instance, between individual casualty insurance and employers' liability insurance. Indeed, it is possible for the same harshness to creep into individual accident adjustments which usually obtains in adjustments under the other policies; and that would be an evil. There is evidence that the possibility of this evil is not imaginary; a certain company, otherwise unimpeachable, has in recent years earned an unenviable reputation for harsh adjustments. Since there is no apparent occasion for permitting these unrelated branches of insurance to be written by one company, if we were at the beginning, it might seem wise to restrain them from so doing. But the fact that such mixed businesses are already established and that while there are no evidences of benefit from the combination, there are also no evidences of harm, militates against the advisability of such restriction. Moreover, it is probable that with the removal of the foolish restrictions now upon life insurance companies the personal insurance which they could supply in combination would

prove so much more attractive that its superiority would render restrictive legislation unnecessary.

The fundamental principle, it cannot be too often repeated, of all insurance is indemnity. The payment of money to a person, who has suffered a loss less than the money paid, is not proper for an insurance organization; and is also against public policy as being likely to aggravate the evils which insurance was intended to reduce, to increase the general loss by the workings of the process of distribution. The danger of over-insurance is familiar to all who are engaged in this branch of the work and it is hardly probable that laws to restrain companies from it are needed or will be. A possible exception appears in the now popular practice of doubling the amount of the indemnity when injury occurs during a journey or voyage. This may not be objectionable when confined to indemnity for death but is suspicious when covering also loss of time or of efficiency or both. Persons familiar with the matter will bear witness that one of the most frequent forms of self-inflicted injuries is that which results in making the person a cripple, through the loss of some member which is of little service to the insured, to gain the round lump sum paid by the company upon the occurrence of such disability.

LIABILITY INSURANCE.

When you pass beyond insuring a man against his misfortune to insuring him against his own wrong, you have taken a very serious step. A man is never liable to others for injuries unless the same have been inflicted through his own intent or negligence. As the dominion of men over enterprises has been extended through the limited liability company system, the sense of direct responsibility has been greatly lessened, perhaps too greatly. Men permit persons to be daily murdered through neglect in the management of transportation corporations, for instance, who would feel immediately responsible if their coachmen with them in the carriages were to run down pedestrians. The sense of responsibility is weakened as the enterprise becomes of such magnitude that it is impossible for the managers to personally supervise.

Our laws were not devised to meet such cases; such cases were unknown when the English laws grew up from the customs of the people. Such negligence on the part of individuals whom the law recognized, was dealt with almost as a crime and the injured could often recover not merely proved damages but also penal damages. But there is a sense of bewilderment when one attempts to fix the responsibility in the case of a corporation. The New York laws now provide that the corporation may

be indicted, and the other day the trolley railroad of Brooklyn was indicted for murdering people in the streets. But means are not yet at hand to hold the proper persons accountable. For instance, the laws are so defective that motormen on that same system are imprisoned by the city if they run their cars above a certain speed and discharged by the company if they do not do so. But the laws are not so constructed as to make it possible to hold the company and its managers accountable. The motorman is arrested just as if he were an independent driver or the streets, when, as a matter of fact, he is as much a mere cog in a wheel, a thing without volition in this matter as is the motor or the car.

Undoubtedly, these liability losses are often grievous and serious things, against which a prudent man would do well to insure. Want of means often renders a man or company amenable for negligence when there would have been no neglect, had it been possible to avoid it. What, for instance, is to be expected of a struggling railroad, burdened with debt and unable to earn running expenses? Such a condition was responsible for the dreadful Chatsworth disaster.

Landlords, who were then practically the sole employers of labor, were the influential men in forming early English law, which did not recognize the employe's right to recover from his employer for injuries received while in his service. Even now employers are in many places not liable for injuries inflicted upon employes by the neglect of their co-employes, though they are liable for such injuries to any other person. This law is being slowly changed throughout this country.

This liability for injuries to employes, being of comparatively recent origin, has been regarded as especially oppressive by employers, and was the occasion of the invention and popularization of liability insurance. Such

injuries are common, altogether too common in many branches of manufacture and especially in certain factories. When the establishment is large, there is a considerable drain every year because of claims for damages through personal injuries to employes. These claims vary in amount and are often very annoying because connected with circumstances which reflect upon the employer's care for the lives of his employes, and at the same time appeal to his instincts of humanity. Sometimes, too, they are so considerable as to turn a profitable year's business into a loss. In consequence of all these things the employers of labor have so felt the need of insurance of this sort that in this country it has become incredibly popular in very few years.

Yet it is exceedingly doubtful whether such insurance is legal at all or not, and yet more doubtful whether it ought to be. It is a common complaint of public carriers and others that they are continually raided by claimants and that they cannot get justice before juries. Juries are disposed to inflict penal damages, perhaps, whenever the facts seem to warrant it. Yet no one who is acquainted with the facts will have the hardihood to deny that the sense of responsibility for negligence is weak enough at present and the methods of adjusting such claims harsh enough. No good end is served by encouraging a less strict sense of responsibility by permitting the negligent person or corporation to be shielded behind an insurance company.

It is very difficult to bring the matter of the legality of this sort of insurance to the test. The company and the insured are both interested in avoiding its being brought to a test. If there is any litigation, it is ostensibly between the injured person and the insured, the company conducting the defense but not appearing in its proper person. This of itself is tainted with champerty

and might be sufficient to outlaw the system. But only in the rare case of the injured person recovering from the insured, and the company then refusing to recognize its liability, could the question of the legality of the insurance be at issue in a suit brought by the insured to recover. Then its illegality could only be pleaded by the company, which is not likely to set up such a plea. Still, if the issue should get squarely before any court of competent jurisdiction, it seems probable that the insurance would be declared illegal as in contravention of public policy.

Such an issue might be made by the insurance officer of a State, though it is likely that the companies would avoid it if possible by withdrawing from that jurisdiction. It is difficult to see in what other manner the issue could be forced.

This form of insurance has been fully recognized as an evil in Great Britain, where it originated. A campaign against it was one of the features of the election which brought Mr. Gladstone and the liberal party into power. A prohibitive Act directed against it was one of the measures which passed the House of Commons and was rejected by the House of Lords, and which made "Down with the Lords!" an issue for all future campaigns. The same difficulty about forcing an issue about its legality under present laws would be experienced there as here. In France, where the system is gaining a considerable foothold, the distinguished statesman, M. Bourgeois, has proposed a bill which will take the whole subject out of the hands of the private companies and vest it in the State, making the insurance and provision for injured employes obligatory. In Germany the insurance is already obligatory and definite, the State standing as sponsor for the protection of the workingmen; this system was the final and crowning act of Bismarck's public service.

This form of national liability insurance removes most of the objections which lie against the system. These objections are the weakening of the sense of responsibility and the adoption of meaner methods of adjusting such claims. In this latter particular, it is notorious that in this country the English companies, though so offensive in their domicile as to occasion repressive legislation, are much less reprehensible than our own. Under any State system yet proposed, the negligent employer would be held more strictly accountable than at present when without insurance, whenever negligence of a criminal character actually existed. The insurance would afford relief to the injured and protection beyond the relief, by enforcing factory regulations so as to avoid danger of injury. These would be benefits; but the present system tends to increase the hardships of the injured and to make employers more careless.

It may be said on the other side that the companies have an interest in making factory conditions better, and that they will enforce this by discriminations in regard to rates. Such discrimination has not yet put in an appearance to any degree worth mentioning, and will not; for the reason that the sources of negligence are not of a sort which appear to inspectors. Defects of construction may be found and corrected, but otherwise the situation is not improved.

Some of the evils of the system are modified by the formation of a mutual company among the employes of a large concern, to which mutual company the concern pays a certain sum or a certain percentage of the amount required in consideration of being relieved of further responsibility. In other words, the employes take upon themselves the responsibility, in consideration of a stipulated sum. This system has prevailed to a considerable extent in Great Britain, and has been adopted by several

companies in this country. The "contracting out" was one of the principal evils against which Gladstone's memorable bill was directed. As a matter of fact, while it should have been beneficent, this system has proven in many cases the means of at once tyrannizing over employes and escaping just responsibilities.

On the whole, so far as private corporations are concerned, it is safe to say that the restrictive statutes needed are such as would restrain all from engaging in liability insurance. At the same time, measures might be taken to avoid holding employers too strictly accountable for injuries for which their negligence is not really responsible and also to furnish immediate and adequate relief to the toilers who are maimed in the process of commercial production and distribution, without regard to liability. These measures cannot be effectively taken by any less a corporation than the entire community.

FIRE AND OTHER PROPERTY INSURANCE.

The most popular form of insurance has been insurance of property against fire. So firm a hold has this form of insurance upon the public that, if solicitation were entirely abolished by all the companies, it is probable that the volume of insurance would not be very greatly lessened, especially if convenient offices were supplied at which insurance could be obtained. Business men consider that it is a mere matter of business prudence to carry an adequate insurance. Not to do so argues want of sense.

Still there is little doubt that the manner of operating the fire insurance business has tremendously increased the fire hazard in this country as well as in other countries where the same system is followed, and where the business has attained much growth. The trouble is that in this class of insurance you are directly dealing in values; the insurance is a bet against a value concerning which the other bettor knows more than any other person can possibly know. Moreover, values are queer things. What, for instance, is the value of a stock of goods just before a dealer fails in business? The whole ground for estimating values is insecure and unstable; and it is not singular that the adjustment of these losses should be one of the most delicate and difficult tasks. The root of

the difficulty is that it is easily possible for a sudden turn to make it more profitable for the insured to lose his property and gain the insurance than to keep the property.

It may as well be conceded that fire insurance companies have made no adequate provision to prevent this. In no part of the country is the crime of incendiarism so wide-spread and so generally successful as in New York City, under the very noses of the underwriters. There the system of adjusters for the insured has grown into popularity to offset the shrewdness of experts employed by the companies and we have recently been treated to the spectacle of a conspiracy which takes in adjusters for both parties, factors and agents and even policemen and firemen. And no effort worthy the name is being made to shut out the possibility of this sort of thing. The fact is that the companies are really, if not openly, proceeding on the basis that it is their business to gauge risks, not to prevent losses and that if they make rates high enough to cover the losses and leave a margin, they have done all that is required of them.

There is this element of truth in this proposition, that it really is the business of the public to see that underwriters do not so manage the fire insurance business that the public interests are injured rather than benefited. And if the public does not attend to the matter of protecting itself, it has but itself to blame. But it is also true that those engaged in insurance are themselves constituent parts of the public and that they are directly interested in so conducting their business that it may deserve public patronage. Moreover, they are more familiar with the facts and the premises and should be able to clearly demonstrate what is needed.

Doubtless more regulation than restriction is needed. The arranging by law for a system of determining the

causes of fires and possibly also of determining the value of destroyed property, would do much to prevent the wanton waste of wealth which now curses the land. But something is needed which will curb over-insurance at the fountainhead, by completely taking away the incentive. This is done under the French law by absolutely prohibiting one from recovering insurance for losses because of fires which originate in the premises, occupied by himself. This is believed to have been very effective, especially in Paris and wherever the construction of buildings is such that fires are not sure to burn other buildings. But we would find it objectionable in two particulars in this country. In the first place, insurance on detached property would thus be completely shut out and the value of insurance to all honest persons would be greatly reduced. The cost of incendiarism now falls upon the honest insured as does the burden of defaulted bills upon buyers who pay their bills; but the burden of the uninsured hazard would be more unendurable to the individual than the premium burden. Else would business men now go without insurance. It is, after all, an heroic method to prohibit insurance as in France like whipping a whole school in order to be sure not to let the culprit go unpunished; the punishment is visited not merely upon the innocent as well as the guilty, but not upon the guilty at all. In the second place, in our nation of frame rows it is by no means sure that a quick-witted incendiary will always set fire to his own premises. Such are not always ignorant that to put the torch to the other end of the row will just as surely mature the insurance and at the same time divert suspicion. A case where that is believed to have been the case has come under my notice.

But, while the denial of insurance in all cases where the fire begins on one's own premises is too heroic a

remedy, there seems no reason why the same should not be applied in a modified form which may be either of the following: The prohibition of the payment of more than a certain percentage of the loss or the prohibition of the payment of insurance when fires occur on one's own premises and are not clearly explained by an accidental cause. Perhaps, the latter of these devices might be only an invitation for more perjury, but the former should be effective.

A restriction of this general character is almost more desirable in the case of steam boiler or elevator insurance than in that of fire insurance, because of the danger to human life which is always involved in elevator accidents and boiler explosions. Some men are singularly callous to the injuries which their sordidness or recklessness inflict upon others; but these are commonly the very men who take the most care to avoid injury to themselves. A dreadful instance of this callousness was given publicity in Chicago some years ago.

Recent years have seen a renaissance of the Lloyds system of individual underwriting. It is to be feared that the system has been revived for the purpose of escaping legal and moral obligations. The system was originally discarded because it was discovered that greater responsibility and certitude could be obtained through joint stock companies. It is not improbable that it has been given new life for the same reason, namely: That greater responsibility and certitude is attained through joint stock companies. In other lines than insurance, the limited liability company system has often enabled men to dodge their liabilities. Many large fortunes are the result of such debt-dodging. But in insurance, thanks to protective legislation and public inspection, the contrary has been the case. One exception to this is where inspection does not inspect, as in the

case of New York under the present administration. But even the appearance of inspection does good, and the departments of other States can offset this by making examinations themselves whenever they bestir themselves. The Lloyds escape this inspection entirely. They make use of the limited liability permission for special partnerships and then proceed as private individuals, who are free from public supervision. The objects in so doing may be summed up as follows: To escape the requirement to provide a sufficient cash capital, to escape the taxes and other public burdens of insurance companies, and to escape the legal requirement to carry on hand sufficient re-insurance reserves. The first two of these objects are insignificant in comparison with the last. It only needs to be explained that, if the shareholders of regular companies were permitted to divide all the premiums and merely let the capital stand to meet the losses, they could in some cases draw down more than ten times their capital stock. The premiums are the fund from which losses are expected to be met. The Lloyds system does not hold the associated members responsible beyond the original undertakings although they may have divided these unearned premiums among themselves.

Fancy the same thing being applied to banking, namely: That men should associate to do a banking business, limit their liability and then treat the deposits as money earned. The unearned premiums in insurance are of the nature of deposits to pay for insurance to be furnished in future. The dissipation of these premiums before they are fully earned amounts in principle to a malversation of trust funds and certainly should not be allowed. The right to do an insurance business is claimed for individuals on the general ground that whatever business is legitimate at all is legitimate for the individual. This

could hardly stand against public policy. But in any case, the right of a man to limit his liabilities is a mere statutory right, given by law and custom and which can be taken away without infringing upon his constitutional rights. The engaging in individual underwriting under a limit of liability excepting through the medium of limited liability stock companies should certainly be prohibited.

CREDIT, SURETY, BURGLARY, TITLE AND MORTGAGE INSURANCE.

The same argument which shows it to be unwise to permit insurance against one's own great laches, tort or crime, shows that insurance against the laches, torts or crimes of others would be most commendable. For, as the former may be expected to encourage criminal carelessness, indifference to the rights of others and even the commission of crime, the latter may be expected to discourage all these, since strong organizations of men are thus brought to have a financial interest in seeing that whosoever trespasses upon the rights of one of them is properly punished.

It is a fact, well understood by students of economy, that the losses because of uncollectible debts are not, as a whole, borne by the dealers who appear to lose but that, instead, the buyers who pay their bills, are compelled to stand the loss in the form of enhanced prices. Solvent purchasers, taken as individuals, can do little to prevent being saddled with this loss, as they cannot make dealers prudent about credits and cannot increase the efficiency of collecting agents. The dealers have, through the

medium of collection and mercantile agencies, done something to enable them to judge more intelligently of credits and to collect from defaulting debtors. But the application of insurance to this form of risk does something which mere circumspection cannot do; if properly applied, it will bring home to each dealer the necessity of keeping his line of credit well in hand, so that he may not lose the benefits of insurance. But, in order that this may take place, it will be necessary that there be tangible benefits. The present regulations of the credit insurance companies, almost without exception, seek to avoid giving more than about ten months' insurance for a year's premium; and if this be not checked, the public may not be convinced of its utility. Perhaps no prohibitory laws are needed, unless to prohibit this sharp practice; in general, this form of insurance should be fostered.

Closely akin is insurance, not merely against laches but against malversation of funds which may either be a tort or a crime. No form of insurance better illustrates the real nature of insurance than do corporate bonds of surety. Nobody would expect a bondsman to return the face of his bond when there was default in a small part of that amount. It is recognized everywhere that the very essence of surety is indemnity. The transfer of this class of insurance—for it is insurance, whether done by individuals for nothing or a company for a consideration—to a company should be beneficial, mainly for the reason that rogues are more likely to be brought to bay and punished for their crimes. When friends are the sureties, the chances are that this will not be done; they are likely to argue that they stand a better chance to recover if they do not cause arrest and, in any case, they are likely not to prosecute, merely because there is nothing to gain by it. But the surety companies rightly

calculate that they have everything to gain by prosecuting, because by so doing they hold before all others whom they bond, a warning example. Consequently, except when friends step forward and let the surety companies out, they prosecute to the bitter end; which fact at once brings friends to the rescue and deters others from entering upon a career of embezzlement. Anything which tends, like this, to a stricter enforcement of the laws is a benefaction.

But it is very easy for the surety companies to go beyond merely guaranteeing the honesty and fidelity of persons; there are many cases in which the bond really covers much more than that. For instance, life insurance agents are not in general permitted to take notes for premiums, except on their own responsibility. Still, practically all agents do take them. For such premiums, the agent and his bondsmen are held, whether he ever really collected in cash, or not; thus the bondsmen are really guaranteeing, not merely the honesty of the agent, but his business ability and, where the transactions through him are too few to afford him a safe average, his business fortune as well. This would not make any especial difference, were it not that the surety companies are likely to attempt using the same drastic means of arousing the agent's friends and of warning the other persons bonded, as it employs when actual embezzlement has taken place. The State cannot afford to foster that, and it might be well to guard against it either by a prohibitory statute or a punitive one for false arrest. Possibly, however, existing laws suffice; and, at all hazards, as is well known, the surety companies avoid this class of risks because of the much greater likelihood of loss.

Notwithstanding which, the more venturesome of them have exhibited a disposition to underwrite contractors'

bonds and other similar undertakings which involve the risk of business ability mainly and fidelity to trust not at all or in a very small degree. This is not open to the objection named since in most cases there are no possible grounds for prosecution. Outside of the risky nature of such insurances, there is nothing to urge against them. There is little danger of corporate suretyship making those who are bonded less cautious than they are when bonded by private persons. The probabilities are that they will be more careful, for a corporation is a relentless critic where it is financially interested, and would be likely to take more precautions against bad management than do private bondsmen.

A step further is insurance against actual crime such as is contemplated in burglary insurance. Probably this will, in time, be the most effective preventive of burglary of financial institutions that could be devised. It may surround the whole country with a preventive detective force such as now operates in financial centers. The nation and even the world are small affairs to corporations which have their representatives everywhere. The general patronage of this sort of insurance will make of the insurance company one gigantic, centralized vigilance committee. It is well known that, when the usual operations of the law failed to cope with horse-stealing in an early day in the west, the organization of the owners of horses into a protective society soon put down the evil effectually. Burglary insurance should have a similar effect, and should by the detection and enforcement of the laws against this crime cut short the careers of those who now prey upon society throughout long lives.

Title insurance is a peculiar outgrowth of our foolish laws relative to transfers of real property, in which matter we are copying the English laws which, while growing out of English historical conditions, are utterly out

of place in this country. There should be no such question about real titles as would render such insurance necessary or possible. Its popularity arises entirely from the difficulty of ascertaining from abstracts of title just what counter-claims there may be against property. The passage of laws, defining titles and arranging for a simpler system of registry, would remove this system of insurance from the arena. It should be thus removed. There is no occasion for increasing the hazards of modern business life by such artificial means and the cause of the hazard should be destroyed. Even as it is, the system of insurance is open to grave criticism in its actual operation; for the companies generally do business within a comparatively small radius wherein much of the property is subject to one original title. Thus the loss, if there should be one, would be severe and might easily ruin the company and destroy the protection. But the necessity for this form of insurance will doubtless be avoided by the introduction of a different system of real estate transfer and registry.

The issuing of debentures and otherwise guaranteeing mortgages have not been generally classified as insurance operations, though they are as truly underwriting as is fire insurance. This is a form of credit insurance which, when properly regulated, might greatly extend the loaning on realty or even on personalty with safety into channels which, by ordinary methods, are risky. For, of course, it is the business of underwriting to cover hazards, and by averaging the loss turn an insecure operation into a safe one. The affinity between insurance and itself is recognized by the most democratic of the companies for mortgage equalization, the building and loan associations, which call the profit charged in excess of ordinary loaning rates, "premium," thus acknowledging that it represents the price paid to cover a risk of loss.

There have been few serious losses in these mutual associations but most stupendous losses in the mortgage and debenture companies, owing not a little to the want of a system for reserving for unearned premiums. But, at bottom, there is nothing objectionable in the system and no necessity for restraining statutes.

REGULATION.

Legislatures have a passion for regulation. Perhaps their favorite conception of regulation is to pile on petty and annoying restrictions; but nothing pleases them better than to find something to regulate. All the more agreeable is the task, if the business to be regulated has slowly and painfully evolved without the assistance of favorable legislation and even against the spirit of adverse legislation. This feverish anxiety to try his hand is, in the man, the legitimate successor of the experimental disposition of the child who takes a clock to pieces to readjust it.

In other countries, and notably in the colony of New South Wales, Australia, insurance companies have progressed to a very high degree of economy, efficiency and responsibility, practically without regulation, except of the most primitive and elementary sort, such as is of general application. The most successful of all life insurance companies, in providing for the needs of the insured at the lowest cost and most effectively and safely, is to be found there; and, in a conversation with me, its manager modestly asserted that the absolute freedom of action allowed his company was chiefly responsible for this fortunate result. It is, in any case, doubtless true that the net results of regulative laws are not what the friends of good methods might desire. This is owing, largely, to the fact that this sort of regulation is undertaken by

men who are not fully informed on the subject and that the laws which are enacted are always the outcome of the struggles of adverse interests and are, not infrequently, compromises which really accomplish nothing. In the United States, the most of that which is valuable in insurance regulation, has been obtained either in answer to a practically united demand of the companies interested or by the active intervention of some unusually able and independent insurance superintendent or commissioner. But, when results of great value have been thus attained, they have been confined to one State and the want of uniformity has been an evil which almost offsets the advantages of the good laws that may have been put in force in some States.

So far as this country is concerned, it is altogether too late to discuss the desirability of regulative statutes. Regulation is here, and here to stay. It is, perhaps, possible to show that regulation began, also, because it was imperatively needed and as the result of a strong disposition of insurance companies to wildly speculate and to behave in a harsh and unfair manner toward the insured. But, whether the responsibility for the earliest regulation rests upon the companies or meddlesome legislators matters very little at this time, since the fact of insurance departments and regulation is fixed in every State in the nation. Probably, the evil of want of uniformity might be cured by national supervision, though, under our present Constitution, national supervision could hardly be extended to companies which confined their operations to their domicile and the number of such companies could be trusted to increase if there were an advantage in so doing. The other manner in which practical uniformity might be brought about, is through the imitative disposition of legislators. The standard fire insurance policies of very many States are now alike;

in nearly all the States the standards of solvency for all sorts of insurance companies are substantially the same. Through the medium of the voluntary meetings of the heads of insurance departments, the current in favor of uniformity of reports and, in the end, of regulations of all sorts is constantly becoming stronger. There is at present no indication that this uniformity will be dictated by the companies, for the department officials have independent and original views on these matters. Altogether, in view of the recent expressions of these gentlemen in their reports as well as in convention, there is reason to expect that a general codification of insurance laws along uniform and just lines will soon take place in nearly all States.

When full and free enabling statutes have been enacted, empowering the people to combine to secure to each other the benefits of insurance against all possible risks of loss or damage either through mutual companies or stock companies, the first problem which arises is to lay down rules regulating the management of the companies. In doing so, reference must be had to the conveniences of the time and to the principles of equity. The responsible management of any institution should certainly be vested in its owners. In the case of a mutual company the owners are the members, a majority of whom may be considered to have the right to control. An opportunity should therefore be given for that majority to express its will and to enforce it. The best possible opportunity should be given. In these days of quick mails and other means of communication, the proxy system cannot be considered the best means that can be afforded under the conditions. The fact is, as everybody knows, that the sense of mutual ownership is practically completely lost in all proxy-managed mutual institutions. In general, it may be laid down as the first principle of the

regulation of management of mutual companies that some system of direct voting or of proportional or district representation should be directed as the method of ascertaining the will of the owners.

In the case of stock companies, the necessity for minority representation is at times painfully evident. In the case of some companies, the surplus is immensely greater than the capital, and the owner of a limited amount of the capital stock may be put into position to crowd the minority stockholders out of the company by piling up surplus and not paying dividends. This has not often taken place in insurance companies, however, whose stocks are infrequently found in the speculative market; and a study of this subject is desirable as a preventive measure rather than to cure an existing evil.

It has not been considered necessary for the State to establish arbitrary standards of solvency for ordinary stock or mutual corporations. While such corporations do business largely on the faith in their solvent condition of persons who sell to them, such faith is not necessary on the part of those to whom they sell. Buyers from them get actual, tangible values in concrete wares. The indemnity nature of insurance has already been repeatedly adverted to in this series. What buyers of insurance receive is a promise to pay, upon a certain contingency, and based upon the solvent condition of the promissor. The ascertaining that solvency, owing to the contingent nature of the liabilities, is a delicate and difficult proceeding which it is impossible that every citizen should perform for himself. The best argument that this should be done by responsible State authorities, is that, where this is not the case, individuals of repute, whose ability and honesty is certified by chartered scientific bodies, have needed to be called on as a substitute for the State departments. Both these chartered bodies and the State

departments have in practice to the present time made use of altogether too inflexible, arbitrary and artificial systems of ascertaining the fact of solvency. Solvency is a matter of fact, not of theory, in determining which all the favorable and unfavorable facts of a company's experience should be taken into account, as well as the nature of its insurance agreements. The systems now in vogue are wanting in just these qualities and it is to be hoped that, as regulative statutes become more uniform, this evil may be remedied. Suggestions for such remedies will appear in the consideration of distinct sorts of insurance regulation in this series.

The regulation of the form of policy contract is found in the United States in every gradation from general regulations to the dictation of every word of the contract, which appears to be an impairment of the right of free contract. Such arbitrary dictation was at first resented by insurance companies; but, in the interest of uniformity, the fire insurance companies have latterly welcomed it as the minor of two evils and have co-operated in drawing up standard policies which are, on the whole, more satisfactory than the policies formerly in use. Whether a general application of such particular regulation would be well, however, may be doubted, since it would act as an absolute prohibition of experimentation by the people, such as has developed the insurance business of to-day. I am of the opinion that dictation of the specific conditions in insurance contracts, other than such as are necessary to avoid altering the nature of the contract and such as are requisite to the clear understanding of the terms of the contract, are unwarrantable interferences with the liberty of the people. This will be more particularly explained as the regulation of different forms of insurance is separately taken up.

Regulations of insurable interest and of the mode of

adjusting claims, so that the nature of the transaction shall not change from indemnity to gambling, are also proper and defensible; as also are such reasonable regulations of the methods of conducting the business as shall prevent injury to the general interest. This sort of regulation is demanded by considerations of public policy and its legitimacy is also defended by the fact that the insurance companies are artificial persons, existing by permission of the State for the benefit of the people. Therefore, their conduct must not be such as to make them a damage to the public interest.

The gathering of statistics has now, for a long time, both in this and all civilized nations, been regarded a public function and of the utmost value in forwarding civilization and its institutions. The statistics of the past are footprints by which the future must be guided. It has come to be recognized that even a large part of the sanctity of the private life of an individual must give way before the rights of the public as expressed in the census taker. No class of statistics is more valuable than that of insurance. Those who have studied the function of insurance in modern life are pretty generally convinced that it is one of the most significant and potent factors in our industrial civilization and destined to play a greater part in the next century than in this. It is, then, of the utmost importance that full and reliable statistics be drawn from the insurance experience of the present and be preserved in such form as to codify into a reliable guide for future operations. This is being carried on in an utterly insufficient way and even the opportunities which are offered certain leading departments are not being fully availed of. It may be said, also, that each fresh demand for statistical information is met with a narrow, selfish and oftentimes merely blind opposition on the part of companies.

REGULATIVE STATUTES.

LIFE INSURANCE.—I.

In the United States, life insurance corporations have assumed several forms, which are commonly grouped under two general classifications, regular and assessment. Those which are called regular use fixed premiums, without the power to increase except on renewable term insurance in which case the premiums are fixed and increasing—that is, they increase according to a fixed scale. Those which are classed as assessment reserve the power to increase their premium rates as contingencies may demand.

Regular companies may be subdivided into stock, mutual and mixed. A company with a stock capital, issuing non-participating policies only, is called a stock company; a company without stock capital, whether issuing only participating policies or issuing both participating and non-participating policies, is called a mutual company; and a company with a stock capital, which issues participating policies, whether it also issues non-participating policies or not, is called a mixed company.

Even greater variety is found among assessment societies, though, with but one exception, they are mutual. Perhaps, the most scientific and accurate way of classifying them is according to their mode of apportioning

among the contributors the insurance cost. Some associations assess all equally without regard to age; others assess according to fixed ratios, graduated by the ages at entry; and still others apportion the insurance cost by an advancing scale of rates according to the attained age. But this classification will find some associations making use of all these different systems, having started with the first plan and gradually evolved to the last. The societies, themselves, make two classes, known as "business" associations and fraternities. The former are those which are conducted on the proxy system and the latter are managed on the lodge or representative system. Though, on the whole, the fraternities may not have adopted the last mentioned method of apportioning losses to the same extent as the "business" associations, yet societies may be found in each class which would comprehend all three methods of apportioning losses.

Up to this time the practice has been to govern the regular and assessment companies by utterly different statutes. The repudiation of the "business" associations by the fraternities has, of recent years, led to a third division of the laws in many States. The original bone of contention was concerning the matter of reserve. The regular companies which sell insurance at fixed, level premiums, all recognize the law of increasing cost in apportioning their losses. Consequently, the premium which they collect is higher than the policy's share of the losses would in the earlier years require and lower in the later years. The premium has been averaged or equalized. To keep it level, it is evidently necessary to accumulate the excess of the premium over the cost during the earlier years, so as to overcome the excess of the cost over the premium in the later years. This is reserve. As the fixed premiums of the regular companies are based on fixed mortality and fixed interest expectation, when the rates

are properly computed, the excess and its accumulations should be just sufficient to make good the later deficiency. Under the present reserve laws in every State except New York, the arbitrary test is made by a standard table and a certain rate of interest, without regard to whether the company's rates were constructed according to that table or not or to whether the company's experience has been more or less favorable than the standard by which it is tested.

The conditions being determined, actuaries use to say that the reserve may be computed either by the prospective method or by the retrospective. This sounds very formidable but is, in fact, very simple. It merely means than, under fixed conditions, you may determine the reserve by what is needed to make good future deficiencies or by what has been contributed in excess of past requirements. But solvency is a matter of fact and should be so treated. The true way to determine it in a company which uses fixed rates is to estimate the future losses year by year by a table which probably represents the company's future experience; discount the same to their present value at a rate of discount corresponding to the rate which it will probably realize; and add the present matured liabilities to make the total. Then in a similar manner and by the same rates of mortality and interest, discount the future premiums to be received, first deducting from the same the average portion required for expenses, and to this add the actual present resources, to make the total. The difference between the discounted future losses and the discounted future premiums represents the amount of accumulation the company should have in reserve. This reserve will agree with the reserve actually accumulated or found by the retrospective method only when the facts and conditions as well as the net premiums all agree with the standards

used to ascertain future liabilities and resources. In other words, the artificial retrospective method, which is practically universal in this country, always exaggerates the liabilities of companies whose experience is likely to be better than the standards employed and always understates the liabilities of companies whose experience is likely to be not so good. And, by not taking into account the differences in premiums, it likewise errs on the same side. In other words, though, because the standards are high, a strong presumption of solvency is raised by the application of this method of valuation, there is no certainty that a company is solvent because found so by the tests commonly employed. We already have the anomaly that precisely the same tests are applied to a company writing only diseased or previously rejected risks.

The proper method of determining the fact of solvency would be to make use of the company's own experience to form a standard, if the experience be sufficiently extended, or, if not, of some table likely to correspond most closely; and to use a rate of discount reasonably indicated by the company's method of investment but not exceeding, perhaps, certain limits, so as to avoid the possibility of assuming the continuance of altogether exceptional experience. Such a plan would be more intelligible and conclusive to the minds of the public than the plan now in use. It would occasion a little more labor for actuaries and some of that labor would be beyond mere tabulation of results from already prepared figures. But that would not be a distressing evil, especially as it would tend to foster originality.

It is possible to estimate with equal precision the future losses of an assessment society and to discount the same. But, since the premiums may, according to the contract, be increased to cover any future deficiency, it must

always be assumed that the possible increase covers any apparent deficiency, unless facts prove a different situation. But *ex post facto* assessments are bad, irremediably bad. The very first requirement from these societies should, for their own safety as well as the security of their patrons, be that they should hold in hand available assets, equal to all accrued claims and to all claims likely to accrue before the next assessment is paid. Beyond that, reasonable regulation would hold an association strictly accountable for any reserve which it agreed to make. This is now-a-days often disregarded, openly and shamelessly so by the New York department in recent examinations.

Associations which apportion their losses according to certain increasing ratios but which attempt to equalize the cost without guaranteeing the premium, can only do so on the basis that the excess of premiums in the earlier years over the cost will, with its accumulations, offset the excess of cost over premiums in the later years. This is precisely the same course of reasoning which justified the regular company reserve, except that the resources to make up future deficiencies are not limited to the stipulated premium. At the same time, societies which issue such contracts should unquestionably be held to accumulate the reserve which their own calculations call for, both because to expend the same is a breach of trust and, also, because the time to increase the premium has arrived when it is found that this reserve cannot be kept good.

Practically the only reason for creating two or three separate bodies of statute law, with the possibilities of special privileges which that implies, is the necessity for discrimination in this matter of reserve. It will be found that the following simple rules will cover this objection:

For resources, add to assets in hand, the present value of future fixed premium, to be determined as follows: First, deduct from each premium the average expense cost to be taxed against it; then determine what table of mortality most closely conforms with the probable future experience of the company and also what rate of interest may be expected to be realized; discount the net premiums thus arrived at by the interest and decrement rates arrived at, which gives the present value of future premiums; add, also, the present value, by a similar process, of future stipulated premiums, not fixed, noting whether the necessity for increasing the premiums exists.

For the liabilities, add to liabilities already accrued, first, those likely to accrue before the next premiums are collected; then, the present value, by the standards determined on, of all future losses under fixed and stipulated premium policies.

REGULATIVE STATUTES.

LIFE INSURANCE.—II.

Perhaps next in importance after proper regulations as to testing the solvency of life insurance companies is the subject of proper regulations for the government and management of companies. At present, there is the greatest variety about the modes of governing companies. It might naturally be expected that a stock company would be managed by one system, a mixed company by another and a mutual company, whether regular or assessment, by another; but there are differences in modes of control which are not accounted for by these differences in structure.

The general principle upon which the systems for governing corporations is based, is the adequate representation of each of the joint owners. In a stock company these owners are the shareholders and to them is given the entire control of the corporation, subject to the regulation of the laws and of public officers having supervision over them. The method by which the will of the shareholders is ascertained is by their votes for directors to whom are delegated the powers of management. From days when the ready modes of communication by mail and otherwise which now exist, had not been invented, joint-stock corporations have inherited

the system of representation by proxy at these meetings. In comparatively small companies, with but few shareholders and them for the most part known to each other, this way of learning the shareholders' will is, perhaps, as good as could be devised, outside of a plan which would discover the will of each shareholder directly. But in companies with large capital and many shareholders, some of whom have bought for investment as they would buy bonds and mortgages, this voting by proxy becomes a farce and, also, in many cases a convenient tool by which a minority management may perpetuate itself.

Especially in banks, trust companies and other institutions which collect together vast sums of other people's money, is there reason to guard the management from becoming one of a cabal which may long ago have parted with their interests but which hold on by the power of unlimited proxies for the purpose of hiding past rascalities or perpetrating new ones. Minority representation, which in all stock companies would appear to be prudent and unobjectionable, in those companies whose operations are of a fiduciary character is especially and urgently desirable. All life insurance companies, doing business on the level premium or the quasi-level premium plan, are so far fiduciary institutions that they are collecting large sums of money to be held in trust to pay future cost of insurance. In the nature of things, it is to be expected that active companies will in the long run accumulate funds of this character far exceeding the capital embarked by the shareholders. Such a thing has been known in the history of American life insurance as the representative of the majority interest deciding that there was more money in wrecking the company than in running it, on which decision he acted. Not without disastrous results to the holders of the minority of the

stock and to the holders of the company's policies, you may be sure. Minority representation in purely stock companies would greatly increase the probability of faithful management in the interest of both shareholders and policyholders.

Several of the mixed companies and even of those which do a mutual or participating business exclusively are governed entirely by the stock interest. In many of the companies, however, the control is supposed to be divided between the shareholders and the policyholders, so that each of the interests has an equal voice in the management. In some States this is the law. One company, at least, the Equitable of Iowa, goes further than this and gives the holder of $1,000 insurance the same voting power at its elections as the holder of one share of stock. In the government of most mixed companies, however, the proxy system is in use, not merely for voting stock interests but also for policyholders' interests. The effect of this is generally precisely the same as if no voting power was granted the insured, namely, that the stock absolutely controls the elections. The exception would be when some officer, who was placed in authority by the stock, obtained through his official influence proxies enough from the policyholders to make himself independent of the stockholders. Such a condition could hardly be considered an improvement.

The application of the proxy system to policyholders' voting is not merely an anachronism; it is also an atrocious misapplication. While it might not unreasonably be expected that in a business enterprise in which a score or even a hundred men were interested as shareholders, these men could most expeditiously and readily transact their business by empowering, each as he saw fit, some other to act for him when not at the meeting, there is no reasonable ground for expecting any such satisfactory

results from attempting to govern a company which is not a business enterprise, so far as the policyholders are concerned, by offering to them the doubtful advantages of the proxy voting privilege. Their numbers and their want of acquaintance with each other, aggravated also by the unwillingness of managers to afford them facilities for communicating with one another, make it impossible for them to express their will intelligently and so as to be obeyed.

This is true, at the best; and when the management, as is commonly the case, purposely manipulates the system so as to perpetuate itself in power, the voice of the members is most effectually stifled. No task is much more hopeless, ordinarily, than to take up the cudgels against a manager thus entrenched, however distrusted he may be by the policyholders. It has been successfully attempted, though, at least three times in the history of American companies; twice, by the combined action of the agents and once by influential trustees. But, as a rule, members would prefer to drop out rather than to spend their time and money in striving against such odds. Even when the glaring faults of the Beers' management of the New York Life were published the country through, it is doubtful whether the rallying committee of the opposition secured proxies enough to have made a decent fight, had the matter come to an issue.

Nearly all the regular mutual companies are proxy-governed; the others permit direct voting only, which confines the control to those who attend the meeting. As their membership is scattered over the entire nation, and as their management is strongly entrenched at home, this amounts to much the same. One or more of the companies limit the number of proxies which can be voted by one man to a very moderate number, thus avoiding the evil of absolutism; but, so far as ascertain-

ing the will of its members is concerned, they might as well have no such limit. Merely to check absolutism is, by no means, to make the rightful owners the actual power in the company. It may be said without exaggeration that in none of these companies is there ever any actual effort to learn the will of the members, either as to who shall rule their companies or in what manner they shall be ruled.

The same thing is true of all the so-called "business" associations, the managers of which seek to be autocrats also. But in most of the fraternities, a different order of things is encountered. These insurance corporations have sprung from the people directly and have inherited from the great orders which preceded them a representative mode of control which may be studied by other mutual companies to advantage. The representation is generally of lodges, without regard to number of members, but sometimes proportional as well as local in character. But, whether the representation be such as will most effectually ascertain the will of the members or not, it is at least an attempt to learn their will and its result is that the members take tremendously more interest than do the members of any other companies. Another result is that they are economically managed and that the people prefer them to such a degree that they can obtain members by the score with but trifling outlay.

In these days, when the vote of members separated by the entire continent might be received by mail and counted in a fortnight, there is no reason why the will of the members should not be ascertained by direct voting on all important questions and especially on the question of what officers they will have to manage their companies. This is entirely feasible and would be economical. The experience of the great Australian Mutual Provident Society which has used this method for many years, is

that it furnishes a stable management, directly accountable to the members, and consequently always on its good behavior; and that the members take great interest, inform themselves, prove progressive and at the same time conservative. Unless some cogent objection can be formulated, it follows as a matter of course that the management of all mutual companies should be secured to their owners, the members, in such manner that they will really control their affairs.

REGULATIVE STATUTES.

LIFE INSURANCE.—III.

It is not merely incumbent on the State to see that the real owners of a company have an opportunity to control its action; it is also a State function to require that a company shall deal equitably between those concerned as shareholders or policyholders on a participating plan. And this is not in any proper sense paternalism. For the corporations are the creatures of the State, which permits for convenience's sake limited-partnerships to take that form. In a partnership, whether limited or otherwise, each partner has at all times a right to an accounting and to what is equitably due to him. This right he can enforce in the courts by a civil action at law or equity. The State, in creating a corporation instead of a limited-partnership, has not altered the nature of the relations between the parties, though it has put it into the power of the majority or those who by proxy represent the majority to completely control the company to the exclusion of others, a condition of affairs not possible under a partnership. One consequence of this condition is that it is a thing of common occurrence in companies of all sorts for the majority interest to ruthlessly trample on the rights of the minority, even going to the length of "freezing out" all minority interests by tricks known to

the "street." Having deprived the parties in interest from one recourse against injustice by making majority rule supreme, it is plainly the duty of the State to prevent the misuse of this power over the property of others. This can only be accomplished by so supervising their apportionment of gains and losses that each gets his due.

To the companies and actuaries of the United States is due the invention and very general adoption of the "contribution plan" of dividing profits of life insurance companies which is based on just principles and should give equitable results. The system consists merely of returning to the policyholder salvage or profits from each part of his premium, according to his actual contribution to the aggregate salvage or profit. Thus, in paying his premium he makes a certain contribution to the payment of death losses for the current year. The sum of all such contributions comprise the total expected loss. If the actual loss is less than this, there has been a salvage, and to this salvage he is considered to have contributed in the ratio of his contribution to the total contribution. Similarly, in the computations of most companies, the "loading" on his premium is considered to be, practically, a contribution to current expenses and the total of these contributions to form the aggregate expected expense. Again, if the actual expense be less than the expected, there is a salvage, and to this salvage he is considered to have contributed in the ratio of his "loading" to the aggregate "loading." In the matter of surplus interest, his funds are considered to have earned interest at the same rate as the mean assets (in some companies, possibly, as the mean reserve) of the company. Whatever this exceeds the amount of interest required to make good the individual reserve, is deemed surplus interest, contributed by him. These three items

compose his surplus, to which may be added proportionate apparent gains from discontinued policies.

Though this plan has been adopted with practical unanimity by the companies of the United States, and though it is manifestly the fair and just manner of apportioning profits, considerable variations from it will be found in practice. For instance, there appears to be a departure from the principles of this method in the apportionment of surplus to short endowments and to limited-payment life policies in one company, especially after the latter become paid-up policies. There is a disproportion between the surplus allotted these policies and an ordinary life policy, for instance, which is not readily explicable. The phenomena of larger dividends on limited-payment policies, after they become paid-up, are possibly subject to explanation on the ground that the company has treated the "loading" as a provision for expenses throughout the life of the policy, and has from the premiums created a special reserve, from which an annuity to cover expenses is deducted each year, the salvage from this provision being a considerable amount. If this be the true explanation—and it is hardly more than a guess—the company would do well to make the system known to all interested in insurance. Possibly, also, some reason, consonant with the principles of contribution, exists for the disproportionate dividends allotted to short term endowments.

Another apparent departure from the system is in the dividends apportioned to twenty year tontines based on endowment premiums by the great tontine companies. In one of these there is also an avowed discrimination by creating a separate mortality class of the insured under these policies, a fact which becomes important principally because practically all the new business for many years has been transacted on this plan. Thus the

older policyholders are deprived in large degree of the salvage derived from the accession of new lives. This same discrimination, by no means avowed, seems to be practiced by an office founded by one of the joint-inventors of the contribution plan. For three years past, natural premium policies issued before 1887, the premiums on which are supposed, on the theory of the management, to consist of pure expense and mortality cost (the former being strictly defined), have been costing a net premium higher than would be required by an experience equal to the full expectation by the American tables. It is not credible that the mortality of the company exceeds the expected deaths by this table; the published returns indicate no such abnormal experience. The only tenable explanation is that these lives are being put in a class by themselves.

It appears reasonable that State regulation should both repress these apparent discriminations and require such openness with the interested policyholders that no discrimination could be practiced. To this end, it might be well to require all companies to insert in their policy contracts a definition of surplus, consonant with the contribution system, and promising definitely to pay the same or whatever percentage of the same the individual company purposes to pay. Such conformity as this, which leaves each individual company free to make such a contract with its policyholders in this regard as may suit it and them, provided it be clear and conformable with an equitable distribution of profits as between policyholder and policyholder, would appear to be unobjectionable on any defensible grounds.

REGULATIVE STATUTES.

LIFE INSURANCE.—IV.

Perhaps one of the most important things to regulate in life insurance is insurable interest, which directs what persons shall be competent to effect and sustain an insurance on the life of another. Because insurance was not one of the ancient customs of the English people, this question is not treated in English common law which was but a compendium of those customs. And, since insurance was introduced, there has been very little legislation on the subject. Consequently, the law which exists consists principally of decisions of courts on disputes between rival claimants under policies. The courts have proceeded on diverse grounds in making these decisions. In this country, the trend has been toward a strict construction of insurable interest, shutting out insurance in favor of persons who have not a financial interest in the life of the insured. This follows closely the fundamental conception of insurance, as indemnity for loss.

The theory of insurable interest as thus applied, has in this way appeared to grow out of reasonable constructions of the common law of England. Singularly enough, English courts derive from that law no such constructions. On the contrary, in Great Britain and her most important dependencies, the courts hold that a man

may legally take insurance or permit insurance to be taken in favor of any person he may choose, and the courts sustain such contracts when made. Moreover, the beneficiary may for a valuable consideration sell his interest in the policy, thus creating a new beneficiary even without the consent of the insured. As a consequence of such decisions, life insurance policies are often sold at public sale, the buyer bidding according to his estimate of the probable life of the insured. Such scenes are not especially edifying; but it often happens that by reason of the feeble health of the insured much more than the reserve value is realized on these policies. And the system cannot have been so dangerous and subversive of good morals as it seems, or the carrying of insurance on lives in which the speculator is not interested, would have been attended with more and graver scandals than it really has. Richard Teece, actuary and manager of the Australian Mutual Provident Association, informs me that very few scandals have arisen from an abuse of the system.

We have not wholly escaped the murders which might be expected to follow such a wide open policy, though our courts have been very strict in their construction of insurable interest. The Holmes-Pitezel murder is a case in point. But it seems reasonable, notwithstanding, that all insurance should be based on an actual interest in the thing insured, whether it be property or life. And that proposition may safely be taken as a basis for sound legislation, especially as to effecting or transferring insurance without the consent of the insured.

This exception, relative to the consent of the insured, raises at once the question: Who is to be the judge as to the insurable interest in a man's life? Are not courts bound to recognize as valid obligations those obligations which a man, in the full possession of his senses, himself recognizes? Is not the taking and paying for insurance

by the insured in favor of a certain beneficiary the best possible evidence that in the judgment of the insured that beneficiary has an insurable interest in his life, based on a recognized duty or purpose to aid in the support of the beneficiary? This is already conceded by the courts in cases where the insured has retained control over the proceeds of the policy and disposed of them by will. But that concession is made because of the fiction that he has an insurable interest in his own life which is the most preposterous nonsense, not to be endured anywhere but in legal sophistry and in order to bolster up a good cause. It were much more to the purpose if the right of the insured to designate the beneficiary, who should be considered to possess *prima facie* insurable interest, were frankly conceded.

If this were established by statutory regulation, as it is now in some States, in the case of fraternal associations, all that would remain necessary to do would be to enact reasonable regulations for cases of transfer of the interest of one beneficiary to another, of insurances when the beneficiary is to pay the premiums and of insurances, especially, which are effected without the knowledge or consent of the insured. Effecting insurance without the consent of the insured, such as on little children or the aged, should only be permitted in favor of near relatives who have a very evident interest in them.

In general, it may be said that no transfer of the interest of a beneficiary should be permitted without the consent of the insured. There is no other way in which speculation in the proceeds of policies can be effectively prevented. An exception to this, however, may be made when the policy is merely assigned as security for a loan and interest thereon, any remainder after repaying the sum advanced and interest belonging to the original beneficiary. Such a transfer would not involve any

speculative element and would be unobjectionable. It is the opinion of a very high authority on assignments of life policies that any other assignment might not hold against representatives of the beneficiary suing for the excess. But this doubt should be made a certainty. When the insured consents to the assignment, he of course practically recognizes the insurable interest of the new beneficiary and that recognition should be considered to establish insurable interest.

In cases in which it may appear that the beneficiary and not the insured intended and expected to pay the premiums on the insurance, there is occasion for increased circumspection. The right of a man to recognize his duty to protect a beneficiary by carrying insurance in his favor, does not imply his right to permit whom he will to speculate on his chances of living. The law should recognize a distinction between the two cases and should apply much severer tests to the insurable interests of persons who are so far self-sustaining that they can afford to take and pay for insurance on the life of another in the hope of reaping a profit from the transaction.

To recapitulate, an insurable interest in a man's life should be recognized as vesting in:

Immediate relatives who are or may become dependent upon the insured;

Creditors to the amount of the insured's obligations to them, with interest, costs and premiums paid by them;

Creditors of a designated beneficiary, to which the policy has been assigned, to the amount of the obligation due them, with interest, costs and premiums paid by them;

Other persons, whether related or not, whose insurable interest the insured has recognized by taking insurance in their favor, while in sound mind, the premiums to be paid

by himself, or has similarly recognized by consenting that insurance already existing be assigned to them.

Perhaps the most shameful incident connected with existing laws, as interpreted by the courts, is the fact that insurance is not sustained in favor of the mother of children, gotten out of wedlock, nor in some States in favor of the children, themselves; as if a great enough wrong had not already been done these persons.

REGULATIVE STATUTES.

LIFE INSURANCE.—V.

The regulation of the form of life insurance policy contracts has never been carried to the extreme point which has been reached in fire insurance, in which, as we shall see hereafter, standard policies, complete in every detail, are forced upon the companies, producing absolute uniformity. There are some special reasons why such a course may not be so objectionable in fire insurance as in life insurance, which reasons will be dealt with in due time. But it would be entirely proper for the State to prescribe the general form of life insurance policies, indicating the order in which its clauses should appear.

An insurance policy is a variation of a simple contract, and of the nature of a promissory note. Its primary elements are, first, a consideration and, second, a promise. But to these, by the very character of the transaction, there are added in life insurance policies the following important features, namely: the name, relationship or other interest of the beneficiary; the time, place and mode of payment of the principal sum; the contingency upon which the principal sum becomes payable, made explicit by the detailed description of all exceptions and specifications. Then, if the policy be a mutual or participating one, a clause or clauses are needed to specify the nature and

amount of the participation and the time, place and mode of paying the same. And, if the policy is to be subject to surrender, the conditions of surrender should be stated.

The form of contract to be prescribed should provide for a specific mention of the consideration together with the time or times and place or places at which the same must be paid. The practice of incorporating a reference to the policyholder's application as a warranty and part of the consideration should be prohibited. The only effect of inserting such a condition is to put the company in the position of being able to perpetrate a fraud on the beneficiary by refusing payment because of trivial errors; it would always be able to defend itself against a claim which it could prove to be based on fraud, even though the statements were accepted as mere representations.

The promise should be in the simplest language; I know of none clearer or more succinct than the "promise to pay" of a simple promissory note. And in immediate conjunction with this promise, in good, bold type, the company should be required to state under just what circumstances it would pay, and under just what circumstances it would not pay. Conditions not there specified should be held not binding as against the insured and beneficiary. The practice of hiding the most important conditions and exceptions of a policy in small print, far from the promise which they qualify and often in some obscure part of the application, cannot be too severely guarded against.

The principal sum should be payable as soon as notice of loss is given and within the State, instead of at the home office of the company. Thus the penalty for delay of payment falls upon the company. The company seeks applicants for insurance at their places of business; they do not seek the company at its place of business. Consequently the whole transaction should be defined to be of

the State in which the insured made application. The policy should be so drawn as to be subject wholly to the laws of that State; and no stipulation should be permitted that it should be construed by the laws of another State, nor that a different limit of time for legal action should apply to a claim under it than the State by its statutes provides.

A clear, fair, unequivocal definition of what constitutes surplus should be incorporated in the policy form but every company should be left free to promise to pay the whole or any definite or even undefined part of the policyholder's share of the surplus. The mode or modes of applying or paying this surplus should also be required to be specifically described in the policy itself and in such manner that the companies are not left free to practically diminish the same by discrimination between policyholders.

In the same way, although it will be found that the definition of surplus involves the recognition of the policyholder's title to the amount reserved on account of his policy, it is well to permit each company to stipulate for such surrender conditions as it desires, or for no surrender value at all. But the law should require that the minimum surrender value at the close of each policy year, in cash, paid-up and extended insurance, be endorsed thereon.

Such a form should read somewhat as follows:

"The (name of company) in consideration of (amount or amounts, times and place of payment of premiums) promises to pay to (name, residence, relationship or interest of the beneficiary) (principal amount) dollars, upon the death of (name and residence of the insured) at (place of payment—preferably, any of its offices) subject to the following conditions: (conditions qualifying the contract to pay the principal sum). The surplus of the premiums paid under this policy shall be determined as follows:

From the premium or premiums hereon shall be deducted from time to time the policy's share of the company's expenses and the actual cost of the net insurance furnished and interest shall be added to the remainder at the net rate currently realized on the company's mean assets; the excess of this amount over the reserve required by the rules of the company shall be the surplus, (all or what part of) which shall be returned to the policyholder (at what times and in what manner.) This policy may, after (what interval) be surrendered to the company which will pay therefor a surrender value (in cash, paid-up or extended insurance), the following being the minimum surrender value which will be allowed at the end of each policy year: (table of minimum surrender values in cash, paid-up or extended insurance.)"

REGULATIVE STATUTES.

LIFE INSURANCE.—VI.

There is, perhaps, a more pronounced tendency to legislate concerning the conditions which may be incorporated into a life insurance policy contract, than on almost any other subject connected with life insurance. This is especially true of surrender conditions or the conditions which determine what values in cash or otherwise may be allowed on surrender. The laws of Massachusetts are existing evidences of this tendency, and the laws of New York and Missouri present other phases of the same thing. The original Massachusetts statute provided for extended insurance in the event of discontinuance; this has since been altered to give an alternative of paid-up insurance or cash. The law of Missouri is much like the original law of Massachusetts, and the laws of New York provide for certain definite paid-up values. An instance, however, of the little value which many persons for whose benefit these laws were intended attach to them, appears in the fact that for many years the New York companies have required applicants to waive their legal rights to surrender values in full tontine policies even to the extent of agreeing to waive the right to any surrrender value. In Missouri, also, all applicants in these companies waived their rights under the statutes of that State

which illustrates the same indifference, though the courts have held that such a waiver is not valid. In Massachusetts also, companies which do not offer the benefits guaranteed by home companies under the laws of that State have all along succeeded in selling their policies to a very large aggregate amount. All of which things seem to indicate pretty plainly that the benefits conferred by such laws are not altogether appreciated.

It has, I consider, been clearly demonstrated that there is no necessity justifying the forfeiture of a large part of the unearned premium of a life insurance policy because the owner chooses to discontinue it. The theory of possible adverse selection because of conscious choice of persons in good health to withdraw, is not borne out by the facts which on the contrary show that companies that allow liberal surrender values often exhibit very superior mortality experiences. The two lowest mortality experiences on record are those of unrestricted surrender companies, if we except that of one company covering a short time and comparatively few lives. It is also demonstrable that there is no actual gain to persisting members from the forfeitures of those who discontinue, the apparent gain being more than offset by the increased expense of getting new insurances on such a system. But these matters I have given sufficient attention elsewhere.* They only have this bearing here, namely: that no law compelling the allowance of full surrender values involves danger, loss or even want of gain to any of the members of a company.

At the same time, there is also no apparent reason why companies and their patrons should not be permitted to make such contracts in this particular, as in all others, as

*Especially in "Effects of Free Surrender and Loan Privileges in Life Insurance."

may be mutually agreeable, when not against public policy. There is no known principle of public policy involved in the question of the surrender values to be allowed for life insurance policies. But there is a distinct principle of public policy involved in the proposition that the conditions of such a contract in this particular should be set forth clearly and distinctly in the contract, especially as there has from the beginning been a deal of misunderstanding about the matter among policyholders. If the facts are clearly and unequivocally set forth in concrete form, that is, in figures showing the minimum values which will be allowed, there would be no misunderstanding and the more liberal and less liberal policies would thus sell on their merits in the competitive market.

Concerning the conditions qualifying the promise to pay, something similar may be said, namely: the most important thing, decidedly, is to insist that the conditions be plainly and unequivocally set forth in immediate connection with the promise to pay and in good sized print. When this is done, there will be little reason to regulate the contents of the conditions themselves; for competition will also operate in that particular. It may be said in this connection that the American companies, as a whole, have perhaps gone quite far enough in removing offensive or objectionable conditions. Possibly, a law providing that policies should not be rendered void because of anything not due to the act or negligence of either insured or beneficary or which they were unable to prevent, would not be unwise. But, when compelled to plainly set forth the conditions, companies will be pretty likely to get close to that desirable point without further interference on the part of the law. In the opinion of many competent observers they have already gone too far in making policies by their terms indisputable and not even subject to the defence of fraud, according to the

contracts. And they sometimes themselves confess that they have gone too far in this matter; for they compromise claims by refusing to recognize the binding force of the incontestable provision as against fraud.

There are some reasons which do not at present appear on the surface, why too narrow regulation should not be practiced in the matter of these conditions. One important reason is that the laws should be comprehensive and general in their application. Insurance against death by accident, for instance, would by a statute making all conditions illegal, be interdicted completely; and merely to state that fact is to condemn such legislation. Similarly, insurance on the lives of pledged abstainers, during their abstinence only, would not be permissible. In view of the fact that in the experiments which are yet to be made before we have material for classification of risks, many sorts of conditions at present not employed may need to be used, it seems the part of wisdom to proceed with caution in making laws regulating these conditions, and to proceed on the basis of permitting the widest liberty consistent with fairness between the parties and with public policy.

REGULATIVE STATUTES.

LIFE INSURANCE.—VII.

Level premiums in life insurance are constructed on the fallacious basis that the expense of the first year will not be greater than that of succeeding years. That is, to say, to begin with, net level premiums were first constructed on the assumption of certain mortality and interest experience, and in these net premiums there was no provision for expense. To these was added a percentage "loading," intended both to cover expenses and all possible contingencies, such as abnormal mortality or decrease of interest below the rate used as a factor in determining the net premium. It has been the custom of American companies, as we have seen elsewhere in these papers, to charge against their policies their share of expenses in proportion to these expense "loadings."

Already by several leading French companies the system of loading for expenses according to the nature of the expense provided for has been adopted; and, before learning of this, the writer had also tried the same experiment in this country with a company which consulted him. The items of expense naturally cleave into four divisions, namely: Cost of procuring business; cost of collection; cost of management; cost of handling investments. The first of these is naturally a lump sum to be paid com-

monly as soon as the insurance is effected, and, indeed, part of it is necessarily incurred before the insurance is effected. The second in this country at least must commonly vary with the premiums actually collected, being a percentage thereon. Since the main office of an insurance company is to provide insurance—and investment expenses are covered in the fourth item—it follows almost necessarily that policies should contribute to expenses of management according to the amount of insurance carried. Indeed, Walter C. Wright believes in applying this principle to practically all expenses, and also in dividing the expense according to current actual, instead of nominal insurance. Investment expenses are, as a whole, incurred according to the amount of money handled and are in any case chargeable as a deduction from the revenue from investments.

The old system which is still practically in universal use in America made no distinction as to the classes of expenses. The whole expense of the company is bunched and apportioned against each policy according to the loading on its premium, which loading in turn is a mere percentage addition to the original premium. It thus happens that policies do not contribute to pay expenses in anything like the same ratios that they contribute to occasion expenses. The ill effects of the system are, however, most marked in the matter of policies with limited payments, in which the provision for expenses intended to cover the policies' contribution throughout their entire existence is dissipated wholly during the premium-paying period, leaving no provision for contribution to managerial or investment expenses after the premium-paying period has ceased. And this reaches the acme of the unscientific and ridiculous when a policy is issued on the single premium plan and the whole provision for expenses dissipated the first year.

Laws, regulating life insurance, should discriminate between these four classes of expenses and should cause companies to incorporate in their premiums and reserves loadings according to the purpose for which the loadings are added. This can be done without fixing an arbitrary loading by merely requiring that the loadings should be thus separated and graduated. The provision for investment expenses need not there appear, and, indeed, should not; for expense of that nature should be deducted from investment returns. But the loading for first cost should appear in the first premium; loading for collection should be added to each net premium; and loading for managerial expenses should also be added to each premium, but not in the ratio of the premiums but at so much per thousand of insurance. And the actual apportionment of expenses to individual policies should then be according to the provisions thus separately made.

The necessity for such regulation was never more apparent than at present. In the early history of life insurance in this country the commissions for procuring new insurances were within the loadings on the first premiums; and much more was left of the premium than was sufficient to pay its mortality cost and to make good its reserves. Gradually the cost of procuring insurances has increased until at this time it practically never leaves enough to pay the mortality cost and to make good the reserve, often does not leave enough to pay the mortality cost, and in some cases and companies has required more than the whole premium. Such a condition, calling for contributions from other policyholders to make good these deficits, and relying upon the expectation of getting even some day out of loadings on future premiums on the new policies, is complex, fallacious, misleading and dangerous. If necessary in order to provide for the cost of pro-

curing insurances and also at the same time to preserve the feature of level premiums, no reserve should be counted against these policies until the end of the second year. That is to say, the rate-making and reserving should be based on the actual facts instead of the theory that the expense cost is the same each year. And, furthermore, where the premium-paying period is to cease while the insurance continues, an additional reserve should be held, equivalent to the estimated future expenses of management.

In accordance with these provisions, companies should be estopped by the law from paying a commission on the first year's premiums in excess of the loading for that purpose. If they cannot buy business with that provision, they should increase the provision and not trench upon other funds for the purpose. It is only by doing this that the infamy of charging most of the cost of procuring new business against the premiums of older policies can be exercised. Companies should also be inhibited from paying more for collection than is warranted by the provision for collection. A little more latitude is required as to expenses of management, any excess of which over the provision may properly be charged, when divided into the ratio of amounts of insurance, against surplus in other expense funds. This for the reason that while cost of procuring insurances is largely a matter of contract, and while cost of collection is also readily determinable, expense of management may vary considerably and suddenly in an unforseen manner.

REGULATIVE STATUTES.

LIFE INSURANCE.—VIII.

Two different species of laws have got on the statute books, proposed, according to their forms at least, to prevent discrimination by life insurance companies. The enactment of such laws is sought to be justified on grounds of public policy, it being set forth that these corporations are performing a quasi-public office and so should not be permitted to treat one more or less liberally than another.

This legislation first put in an appearance as a political move, aimed at securing the negro vote, or, in any case, at giving a vent for abolition sentiments. Probably both motives contributed to cause the enactment of laws compelling the insurance companies to accept negro risks at the same rates as whites. The acts have, of course, been carefully phrased in legal language, so that the apparent intention is to prevent discrimination because of color between persons of the same age and expectation of life; but the meaning is that the State determines arbitrarily and against actuarial evidence that a negro of the same age and general health and family history as a white man, has the same expectation of life. Such a law operates, when enforced, as a check on the determination by life insurance companies from their own experiences or other

data what are true relative expectations for the two races. And, in many cases, it has also operated to cause companies to reject all negro applicants, without appearing to have established any rule requiring their rejection. In other words it has had a boomerang effect upon the interests of the persons whom it was hoped that it would benefit.

Scientific classification of hazards in life insurance is a thing which legislatures ought to foster and encourage; for only by that course can the benefits of insurance be extended to cover many individuals who under the present plans are regarded as uninsurable. When life insurance companies have learned to properly and accurately discriminate, the best risks will receive their proper rating and many who are now refused insurance altogether will find it possible to secure at adequate rates the protection which their families stand in need of. And the benefits of intelligent discrimination will not stop there. In so far as, for instance, the rating up of premiums on an individual's life is caused by anything for which he is responsible or which he can remove, it will have the effect to give an inducement for a correction of that which unfavorably affects his prospects for long life. By this means life insurance can be made the genuine handmaid of hygiene, causing the abandonment of evil habits and the like; and considerations which regulate this discrimination might easily have an influence even upon heredity, parents being consciously guided by the lessons which the life insurance companies inculcate by their practices. From these facts and from the further fact that the true mission of insurance is to accurately determine hazards and charge for them,—a thing which of itself has a beneficial social influence,—it clearly appears that laws against discriminations should apply at most merely against arbitrary and unreasonable discriminations.

The acts prohibiting discrimination on account of color were presumably asked for by the negroes who were intended to be the beneficiaries. It has been followed by acts of quite another nature, known as "anti-rebate" laws which were not asked for by their pretended beneficiaries but by that body of men among whom the very persons who had been guilty of such discrimination were to be found. These bills on the surface were for the protection of the policyholder to whom no rebate was given and who was on that account supposed to be greatly aggrieved—not because he did not get a rebate—but because somebody else did. The bill proceeded on the theory that if one who did not obtain a rebate discovered that his neighbor had, he would consider himself injured, not because he was himself missed, but because his neighbor was not missed. Because of this, he was understood to be demanding, not that a law be passed compelling the companies to lower their rates and give everybody what they could afford to give his neighbor, but that they should not give the rebate to either himself or neighbor. As a matter of fact, no such a body of unrebated policyholders ever put in an appearance in the legislative halls or petitioned to have their grievances redressed. The persons who did so appear and did so petition were the agents and companies who were doing the rebating and in whose power it already lay to stop doing so.

Such a situation was anomalous, and in fact, contradictory. Within the companies the old policyholders whose contributions for expenses were being heavily drawn upon to pay the enormous commissions that made the rebates possible, had a genuine grievance, perhaps: but, had they approached the legislature at all, it would doubtless have been in order to restrain the companies from paying such enormous commissions. To them it would have made little difference whether part of these commissions went

to the applicants or all was retained by the agents; indeed, they would have been likely to rejoice to learn that a large part had reached the public and that the agents had not actually become millionaires.

What the ultimate effect of such laws may be, it is hard to forecast. Their constitutionality is seriously doubted by many able lawyers. If they are constitutional, a cloud is thrown upon the validity of every policy, the premium of which has been rebated in part or wholly; the holder of such a policy is thus at the mercy of one who is at best a law-breaker, the rebater himself. The construction of the laws has so far been such as to make them cover much more than was probably intended, such as to prohibit giving commissions to insurance agents on policies on their own lives, dating policies back to prevent increase of nominal age, taking notes for premiums without interest, accepting premiums in advance and allowing a discount and to prohibit charging a less premium for the first than for subsequent years, though all be charged alike. The propriety of laws which are thus in restraint of trade is very questionable; but at the same time it may be that this is merely the first step toward the taking over of insurance by the State which thus begins its encroachments upon the preserves of corporations. Whether that would be an evil or a good may be a disputed question.

REGULATIVE STATUTES.

LIFE INSURANCE.—IX.

What statistical information the State should require life insurance companies to furnish to the public has ever been a matter of dispute. Naturally the disposition of individual companies is to supply only that information which in each case gives the company an advantage in comparison and to suppress that information which might place it at a disadvantage. This is the legitimate outgrowth of the competitive system and is precisely the *modus operandi* of all companies in their field work, always, of course, with more or less show of fairness in order to make the comparisons appear plausible. It can hardly be adopted as the information to be legally required, though, because there would be utter want of uniformity. Scarcely two companies would give the same information about their condition and operations; and this would not be statistics, whatever else it might be. The first principle, then, of laws requiring statistical information from the companies, is that the information required of all the companies alike should be of the same character, so that comparisons may be instituted.

The disposition of many is to extend the province of statistical inquiry, so as to pry into many details of man-

agement, wherein companies generally differ greatly and which have little importance to the public. In other words, there are those who place no limit to the proper scope of statistical inquisition; but, instead, would make it an inquisition, indeed, so that the mistakes, petty misdoings and extravagances of the management should be annually exposed. Whether it might not be a good thing to enable the policyholders of companies to thus investigate their affairs, independently of the legal authorities, is not to be considered in this place, except to say that in the case of mutual companies and associations such powers appear properly to belong to the members and, within reasonable bounds, should be legally granted to them. But no such investigations are necessary for usual statistical purposes and there is no reason why the insurance departments' reports should be lumbered up with them.

To determine what is the proper limit of the statistical inquiries of authorities, it is well to consider what is the purpose of such inquiries. First of all, it is desired to determine the financial condition of the companies, which may be accomplished by ascertaining their resources, sufficiently in detail to make their value apparent, and their liabilities. Many would have the work of the department stop short at that point, condemning all further demands as inquisitorial and unreasonable. They thus take a position which is directly antagonistic to those whom they regard as meddlers. It appears, from sound premises, that their attitude is no more defensible than that of their opponents. The State properly wishes to protect its citizens by giving them information about the soundness and relative strength of life insurance companies; it may quite as properly wish to furnish them with officially ascertained information concerning the relative success of the management of these companies, especially

since in almost all of them an applicant is expected to benefit or suffer financially by that management, through his participation in the surplus. Therefore, statistical information of a general character, having a direct bearing on the economy and success of management, should be required and furnished to the public.

This does not mean that the companies should be compelled to exhaustively expose the details of their transactions each year; it does mean that they should be compelled to furnish in aggregates just that information that will enable the public to intelligently decide which of them it desires to patronize. This would not call for as much detail as do the blanks now in use, which do not, with the exception of the "Gain and Loss Exhibit," adopted by the convention of insurance commissioners in 1895 but afterward discarded by most of them, supply information of any great value in this respect. The efficiency and economy of management of any company can be judged by comparing three things in its actual experience with three standards, common to the companies or at least common to most companies. These are: Actual losses to expected losses according to the standard table; actual expenses to expected expenses which is the aggregate "loading:" and actual interest to the interest necessary to make good the reserve required by law. If the intricate and yet inexact "Gain and Loss Exhibit" is cut down to these three items and a comparison of values allowed for surrendered policies to their reserves added, about all there is in it that is valuable will have been preserved, and the information will be in a far more readily intelligible form.

In order to make these figures valuable for statistical comparison, care must be taken that they relate to the same thing. For instance, industrial insurance should be tabulated separately. There is no object, also, in requiring

this information from a stock company writing non-participating insurance only or requiring it concerning non-participating insurance in any company if the mortality, expense and interest accounts of such business are kept separate by the company. From the actual interest, also, should be deducted the interest belonging to tontine or other accumulations of surplus. A more thorough tabulation of expenses is also desirable, especially a comparison of expenses for the first year of insurance with the "loading" on premiums for the first year of insurance. Probably the publication a single time of the facts in this matter would suffice to induce the companies to devise some better way for providing the money to procure business, than deducting it from the contributions of older policies.

Not only would the discovery and publication of this apposite and significant information enlighten the public; it would also prevent the successful use of misleading ratios, such as have been common, and would, besides, tend to shame the companies' managers, when the showing was especially discreditable, into better practices. The report of the Connecticut department covering the business of 1895 shows, for instance, an aggregate expense of 97 per cent. of the aggregate "loading" in all the companies, which means that some companies have used more than the entire "loading." The mere exposure of such conduct of the business tends to correct the evil. And when the true ratios, which are few and simple, illustrating the efficiency and economy of management, have become common property, the fallacious and misleading ratios will no longer answer their purpose. Who, for instance, would listen to a comparison of death-rates per thousand insured or of death losses to interest receipts, when the true comparison of the losses companies did have with the losses they expected to have, was accessible?

Other countries already require statistical information of this sort, conspicuously Switzerland, Prussia, and other European nations. But in many cases, as in the "Gain and Loss Exhibit," it is unfortunately accompanied with a confusing mass of annoying inquiries of inconsiderable importance. It would be better if the inquiries were rigidly confined to those matters which are neither of the realm of expert accounting or actuarial science, but which are comprehensible by the people at first hand.

REGULATIVE STATUTES.

PERSONAL INSURANCE OTHER THAN LIFE.

To this present time, few branches of insurance appear to have required less regulation than personal accident and illness insurance, if we may trust the legislatures to have reflected by their acts the actual demand. And, in this respect, reason is in accord with experience, for the nature of this class of insurance is so simple and personal that few of those mysterious and ill-understood matters which called for regulation in life insurance are encountered. Commonly the contracts are simple, direct promises to pay, upon the occurrence of definitely described contingencies, definite sums of money for a limited period of time or upon death by accident a certain lump sum of money or a series of instalments running over several years. The contracts are usually short and distinct in all of their provisions and cover about as broadly as could be asked.

Two or three things about these contracts as generally drawn require attention. One thing is that the payment of monthly or weekly indemnity is often deferred until the completion of the limited term or until the recovery from the ailment, sufficiently to be about one's business. Sometimes the injured have been led, not recognizing

this, to make proof of loss before really recovered, and have thus inadvertently put themselves in the position of having released the company from further liability. Now and then, even with their eyes open, injured men have been compelled through dire necessity to thus prematurely release the company. This should be effectually prevented ; if necessary, it would be proper to pass laws requiring the disability payments to be made at monthly intervals. In the same way it might not be improper to require that policies which pretend to cover in specific amounts the "loss of a hand or a foot or other member, should cover the entire loss of the *use* of that member. Mere caviling disputes on technicalities of definition should be avoided by legislative definition of the meaning of contracts, if required.

Most of the caviling, however, is after all not the consequence of difference of opinion as to construction of liability under the policy contract but as to the facts. Disability is so broad a term that those who like to loaf at a good monthly income might very well conceal their disinclination to work under that euphemism. But in this matter at the present time, because of its superior financial ability, the company is likely to have much the advantage over the poor and often distressed claimant; and, it is to be feared, this advantage is sometimes made use of. Nowhere is the desirability of a cheap and speedy arbitrament more clearly desirable than in the settlement of disputes between such companies and their claimants. Voluntary arbitration will not do ; they have that now. What is needed is a law to make it compulsory to submit disputes of this nature to arbitrators to be selected in the usual way, one by the claimant, one by the company and a referee by these two.

The effect of the establishment of such a system, with full and final authority given to the arbitrators to deter-

mine all questions of fact, upon the almost wholly neglected branch of personal insurance, illness insurance, need not be merely surmised. Only by the adoption of some such a system for settling disputes is it possible for illness insurance to thrive. The chief difficulty with it in practice is that it is very difficult to determine between illness and shamming, and also to distinguish between disabling and non-disabling illness. All these are questions of fact, concerning which arbitrators are likely to judge as fairly and impartially as may be ; the truth of which statement is attested by the circumstance that only by the establishment of such arbitration by law has illness insurance been made to thrive in Great Britain or elsewhere..

Such a cheap, speedy and impartial means of determining questions of fact would leave few questions to be determined by the courts, but those of legal construction of the contract. These are not so many ; and, with the facts determined before the case was appealed to the courts, the judgments of the courts would in each decision be made to stand out with great distinctness. A remedy might be sought, as has been done in fire insurance, in the adoption of a standard policy, but the desirability of such a policy is exceedingly questionable. The tendency of personal insurance should be, as it at present is, toward covering more and more contingencies and giving protection to more and more classes of men. A standard policy at this time at all hazards, would certainly be a conservative compromise, and, by thus crystallizing, would be a stumbling block in the way of making personal insurance what it ought to be.

REGULATIVE STATUTES.

FIRE INSURANCE.—I.

No branch of insurance has been so regulated as fire insurance. At this time the States in many cases regulate the whole subject from end to end, excepting only the rates of premium, and devote some effort also to regulating the rates by refusing to those engaged in the business the privilege of harmoniously agreeing upon them. The State dictates how and with what capital fire insurance companies may set forth and what form of policy they may issue, which means what contract they shall be privileged to make; which latter provision, at least, is a degree further than the State has gone in other lines of insurance.

A reason exists for it in fire insurance, however, that does not exist in most other departments of insurance. In fire insurance it is not usual for property to be insured in one company only; on the contrary, it is in many cases covered by many companies. The cause of this is, first, the disinclination of companies to write large lines, and, second the disinclination of the insured to risk all in one company. The insured "makes assurance doubly sure" by not chancing all in one company, and the companies by so dividing their risks that in all probability they will

not experience disastrous losses in a very short time. Both companies and insured have become wise on this point as the result of great conflagrations, and of that at Chicago, especially.

It thus happens that a large number of policies are running concurrently on the same property. But, if the terms of these policies are different, it may transpire that there are serious provocations of disputes between the companies as to their relative liability. This situation is not endurable, and that it is not endurable is felt by nobody more plainly than by the companies themselves, which instruct their agents to make sure in all cases that these concurrent policies read and cover alike, as to the written portion. But it is clear that if the printed portions of policies differ widely and if the contingencies against which the policies cover are not the same, there cannot be a harmonious adjustment of the common loss, even though the written portion be alike, thus describing in the same manner the property to be insured. It was to cover such a case that standard policies were constructed and adopted in several States, and the companies enjoined from using any other form. The benefits are patent.

But uniformity has its disadvantages as well as its advantages, the most serious disadvantage being a disposition to crystallize into what may now be the best possible form but what is, notwithstanding, far from a perfect form. It is the office of insurance to insure, to cover to the uttermost. The exceptions and reservations in insurance policies are, so far as they go, refusals to insure. They are justifiable just so far as necessity compels their use and no further. Whether necessity does so justify their use is a matter of opinion upon which men may differ according to their knowledge of the facts and concerning which all engaged in insurance may be of one

opinion now and of quite another when events have demonstrated the fallacy of the old view. Standard policies, when permitted to stand for a long time without alteration, are likely to represent an ultra-conservative phase of insurance opinion, and to contain many provisions which the most enlightened and progressive underwriters know to be unnecessary.

Moreover, uniformity means the suppression of individual experiment which is sometimes required in order to explode ancient fallacies and bring in the new truth. It sometimes happens that under a uniform system affairs will go along their somnolent course and the false and foolish things will be universally accepted as verities and never inquired into nor given an opportunity to show their true colors. This, however, is not likely to be the case when legislators and the people whom they represent keep up a constant pressure for simpler and yet simpler conditions as they usually do. The consequence of that is that, in the course of debate and contention, any new light which exists is brought to bear on the subject.

Within the past year considerable impetus has been given to the movement for simpler forms and less conditions by the paper read at the convention of the Fire Underwriters' Association of the Northwest by Insurance Commissioner Fricke, of Wisconsin, and the discussion which ensued both at the convention and since then in the newspapers. There is every likelihood that an era of simplification of fire insurance contracts is at hand, such as the era of simplification of life insurance contracts which has resulted in life insurance being about as clean and unexceptionable a proposition as one can find in business. But it is hardly to be expected that, with standard policy forms in constant use, this era will come in so rapidly as in life insurance where the companies were in active and bitter competi-

tion. There one daring innovator could and did force indisputable policies on his competitors by urging his own.

But then no such competition could well exist between fire companies, anyhow, because of this same division of the risk among many companies, and, also, because of the frequent renewals of policies. The competition of fire insurance agents for business has always been and always must be principally in rates of premium or in other advantages of a similar nature offered the insured, so long as conditions remain anything like those obtaining at present.

Encouragement of the simplification of policies might be offered by law through an amendment to standard policy enactments, permitting companies to waive any of certain conditions named in the policy, which conditions are in the opinion of the legislators not in the interest of the insured. But great care should be taken that the provisions of the standard policy which are favorable to the insured are not also privileged to be waived. And, after all, but little can be expected from such a privilege for the reason, already stated, that the arguments in favor of uniformity in concurrent policies are too potent to be disregarded by the companies.

It appears, therefore, that regulation in fire insurance not only extends to the extreme in some cases of prescribing the very terms of policies, but also that it is justified in doing so by the necessity for uniformity in all concurrent policies in order that the liability of companies may be so fixed and determined that the insured may not be involved in endless disputes and litigation. And, it is often asserted, there is the same reason or an equally strong reason for uniformity in the standard policies of different States. But in this view we cannot concur; for the only objection to a want of uniformity between standard policies of different States is that

diverse policies make companies appear in the light of granting privileges in one State that they do not grant in another. This is a mere trifle and not to be compared with the benefits that may be expected from the separate studies of the proper provisions of standard policies by legislatures and their committees, compared with mere poll-parrot duplication by them of forms which have been adopted in other States.

REGULATIVE STATUTES.

FIRE INSURANCE.—II.

No definition of the word insurance would be adequate and fair which did not recognize it as a contract for indemnity—that is, for the replacing in kind or value a thing which has been lost. It seems singular, therefore, that any legislation should ever have been conceived which would transmute such a contract into one of pure gambling, by compelling a fire insurance company in any case, to pay more than the actual value of the property destroyed. That there should ever have been such legislation is entirely owing to the unfortunate practices of insurance companies, mainly in the adjustment of losses. These practices, in a nut-shell, are as follows: the cause of fires and the amount of loss are determined by dicker between the insured and an adjuster, employed by the company, or, in many cases where more than one company is concerned, a number of adjusters. In practice, the suspicion of fraudulent incendiarism has always been employed as a means, not of escaping the payment of loss entirely, but merely to cut down the amount to be paid. The result of such a custom is that adjusters have been keen to pounce upon even the remotest cause for suspicion, or the faintest shadow of a possible defense, to force a compromise with the policyholder instead of

paying the full amount claimed. This evil has prevailed to such a degree that an adjuster considers himself exceedingly unfortunate if, in any given case, he is not able to effect a salvage for his company.

The consequence of such action is that the very men at whom the practice is supposed to be directed, viz: incendiaries, prepare for it by swelling the inventory of the property consumed. On the contrary, innocent sufferers by fire find themselves altogether unprepared for the trained adjuster. Because of these things, there has arisen in every community a strong sentiment adverse to fire insurance companies and to their methods of adjustment. In several States this adverse sentiment has taken the form of valued policy Acts which compel fire insurance companies to pay the full amount of the insurance whenever insured buildings are destroyed, without regard to what their value may have been. These laws proceed on the assumption that insurance agents in placing insurance judge of the value of property and they make this judgment final and binding on the company. It is scarcely necessary to say that the assumption is erroneous, and that the average person who can be secured as a fire insurance agent is not capable of judging of the value of properties with anything like exactitude, and that no person, however capable, could conceivably know so much about the value as the owner in most cases.

It is generally conceded, and might easily be demonstrated, that the loss by incendiary fires in the United States has a deal to do with causing the excessively high fire insurance rates which obtain in this country. It is also demonstrable that States which have enacted valued policy laws have very considerably increased the insured fire waste. They would doubtless have still more increased the fire waste if it were not for two things; first, that the law is not enforced except at the option of the claimant

and that the larger number of adjustments are made by agreement between the insured and companies, without reference to this law or the courts; and, second, that the law does not apply to personal property, as indeed it could not without being absolutely ridiculous.

The evil which valued policy laws were intended to cure is a real one and should have been taken hold of in a more intelligent manner and attacked with the co-operation of the companies. At this writing, it appears as if, on the initiative of the city of Boston, followed by the State of Massachusetts, some actual progress was to be made in dealing with the evils. This initiative consists of the appointment of fire marshalls whose duties are to determine the causes of fires and to bring incendiaries to justice. The establishment of such offices should be supplemented by legislation prohibiting companies from compromising or adjusting claims until the causes of fires have been determined. This policy would take away the excuse and incentive for whittling down honest claims against insurance companies.

It may, possibly, scarcely be a subject for legislation, but the insurance companies could readily assist in removing all prejudice against themselves on account of adjustments if they would seek to establish the arbitration principle in determining values of property. It might be possible to secure such legislation as would make the findings of arbiters final and beyond appeal, and compel the parties to submit claims to arbitration. In the absence of such laws, there is little doubt that most claimants would be pleased to adopt this method. In lieu of that, the companies could probably make their adjustments more impersonal and, consequently, more satisfactory, if they combined to employ a force of adjusters for each State who would appear in a more or less public and semi-official character, just because they were not employed by any

individual company. These things are mentioned as means by which companies could assist in preventing ill-advised legislation. If they do not take the initiative in so doing, it might be the part of wisdom for the State to constitute a board of adjusters and require all adjustments to be made by and through them. Such legislation may appear to be somewhat tyrannical, but it cannot be denied that there are grave reasons of public policy why something should be done. Under present systems, many millions of dollars of property belonging to innocent persons, who are often uninsured, are annually incidentally destroyed by incendiary fires, against which the present methods of adjusting losses interpose no serious obstacle; and millions more are unnecessarily paid in increased rates because of incendiarism. It is decidedly against the interests of the State that such conditions should be permitted to continue and it might properly interpose if the companies do not evince a disposition to correct the evils themselves. It goes without saying at any rate, that the State might much more properly thus interpose in a manner consistent with the true nature of insurance as an indemnifying contract than in a manner so inconsistent as are valued policy laws. The proper and only effective way to suppress incendiarism is to make it unprofitable and unpopular because unprofitable.

REGULATIVE STATUTES.

FIRE INSURANCE.—III.

A desire to avoid converting fire insurance into a gambling instead of an insurance contract has prompted fire insurance companies at times to insert clauses in their policies, providing that in event of fire the companies should not be responsible for more than two-thirds the value of the property destroyed. This clause is commonly known as the "two-thirds value clause," and has sometimes been strenuously objected to. The protests, however, have usually been to the effect that the insured did not know of the existence or of the effect of the clause until after the loss had been incurred. Few persons have had the hardihood to assert that when such a clause is agreed upon by the parties and fully understood, it involves any hardship. It may be true that in some cases the insured was not aware of the existence or of the effect of the clause; but such a condition of facts should not be held to render it of no effect unless it is clear that he could not with ordinary care have known of its presence. A slip has generally been pasted on the face of the policy, stating in large, clear type just what is meant. Such being the case, there is little excuse for want of knowledge of its existence or meaning, much

less excuse, for instance, than for like ignorance of the existence or effect of a clause printed upon the policy.

This being true, such a condition ought to be upheld unless it is plainly inconsistent with the law or against public policy. Public policy, so far from being opposed to such a clause, appears to urge its adoption as a general or universal rule, inasmuch as insurance companies should be confined to indemnity contracts as distinguished from gambling contracts. This is especially applicable to conditions which may prevent incendiarism for the amount of the insurance. Notwithstanding this evident agreement of the clause with the public interest, laws have several times been proposed and bills have been favorably considered which would prohibit the insertion of such conditions in policies. The only powerful argument in favor of such legislation is the desirability of uniformity, coupled with the assertion that, the general practice being not to have such conditions, one is thrown off his guard and does not look for it. This state of facts, if admitted to exist, might call for a reform of the common practice, so that all policies should contain such conditions, rather than the prohibition of such a safeguard.

All fire insurance policies on a certain class of hazards are supposed to cover a similar hazard, both as to kind and as to degree. Especially is this true, for instance, of policies issued upon the same property. As is well known, the premiums for fire insurance are computed as percentages upon the sum insured, without regard to the value of the property covered. But it is decidedly not true that the risk of loss is the same to the insuring company in each of the following cases, viz: When the property is insured for one-tenth of its value and when it is insured for three-fourths its value. A loss might easily occur which would be total as to the former insurance, but would be only partial as to the latter insurance,

This means that there is a diminishing increase of the probability of loss, starting from a very low amount of insurance and proceeding to about the point where the value of the property and the amount of insurance so nearly coincide that the moral hazard of incendiarism is interposed. This means, that if properly handled, on a property worth $100,000, a company could afford to write each $10,000 insurance for a lower premium than the preceding $10,000, up to about the ninth $10,000, for instance. If single companies took entire lines in most cases, just such a treatment of the problem would doubtless answer.

But companies do not ordinarily insure entire lines and the only practicable plans to deal with the problem that present themselves, are: either to make a falling rate on the whole risk, according as the aggregate insurance rises, up to a certain limit, or to make a reduced rate on the whole line in consideration of the insured agreeing to keep his insurance up to a certain percentage of the value. There have been cases of the application of the former method, but it is plainly inapplicable to most situations in insurance practice. On the contrary, the plan of requiring the insurance to be kept up to a certain limit is applicable to nearly all cases where, by reason of a multiplicity of small losses, a full line of insurance is desirable.

The principal difficulty about this plan is to enforce its provisions. The most common method of doing this is by a co-insurance clause, visiting the penalty upon the insured that, if a loss occurs and it appears he has not secured the agreed proportion of insurance, he shall be deemed a co-insurer for the unsecured amount and shall bear that proportionate part of the ascertained loss. For instance, suppose that the clause, as it usually does, requires the insured to carry an insurance equal to three-fourths the value and that, when a fire occurs, it is dis-

covered that he has an insurance of but one-half the value; then, since one-half is two-thirds of three-fourths, he will be a co-insurer to the amount of one-third of any loss. In other words, the companies will be liable for only two-thirds of the ascertained loss. If the loss is total, this will make no difference since the amount of their policies was but one-half the value; but if the loss be only partial, then the clause may make a difference.

Several objections have been entered against the permission of the use of this clause. The principal claim, however, is that it is not well understood by most persons, even when they have consented to its use. It must be conceded that its operations are somewhat complex, and that they might not be clearly understood by even a man of fair intelligence. But this much is, doubtless, understood by practically all in whose policies such clauses appear, viz: that they are under obligations to carry insurance up to a certain percentage of the value. They may not see just how the penalty will apply, but they do know what is expected of them, and, if they act in good faith, there is not likely to be a penalty. Such policies are usually issued at a reduced rate or it is specified that, only with such a condition, will they be issued at all; consequently, the insured is sufficiently advised of the importance which the companies attach to his carrying a certain proportion of insurance.

It is natural, perhaps, that some who consider the matter superficially only, should protest that there is a fatal inconsistency in insisting upon the privilege of two-thirds loss clauses on the one hand and of three-fourths value clauses on the other. Their protest will rest upon the argument that if it is desirable to limit the amount of the insurance to two-thirds the value, it cannot be desirable to compel one to carry more than that, namely: three-fourths the value. The answer is that these clauses fit

very different cases, the two-thirds loss clause the case of insurance on small properties where the one-third margin is not many dollars and the three-fourths value clause the case of insurance on large policies where one-fourth margin is many dollars and where the tendency is to carry under-insurance. Over-insurance is at once against the companies' interest and the public interest because it fosters incendiarism; under-insurance is likewise against the companies' interest because the ratio of losses to premiums is heavier and also, to a limited degree, against the public interest as it gives an unfair advantage in rates to those who under-insure as against those who fully insure. Both the companies' and the public interests are best served by a reasonably full assurance, a sufficient margin under the whole value.

REGULATIVE STATUTES.

FIRE INSURANCE.—IV.

No department of insurance has become so popular and so generally patronized as fire insurance. In commercial development its progress is unequalled by even life insurance, successful as the latter has been. But not so much can be said for it in the matter of scientific development. This is owing very largely, if not entirely, to the complexity of the hazard. In the first place, almost every fire hazard is composed of three separable elements. First, the risk of fire from within, known as the internal hazard; second, the risk of fire from the immediate environment, known as the exposure hazard; and third, the risk of fire from remote environment, known as the conflagration hazard. In the making of rates and in computation of fire insurance reserves, both of which things are empirical and not scientific, the internal hazard and the exposure hazard are alone taken into account. Only the most prudent and cautious of the managers of companies make a provision by holding a large surplus to meet the periodical conflagrations, caused by the dense crowding in large cities or by prairie or forest fires.

An effort has been made within the past few years to reduce rate-making in fire insurance to a science, by preparing a schedule of minimum rates for the average risk of each class, covering the internal hazard only, and adding thereto or subtracting therefrom, according to certain fixed schedules, for anything which is esteemed to diminish or increase the hazard; thus building up a rate with due consideration for its component parts.

The difficulty which has been encountered is that, despite the existence of fire insurance now for nearly two centuries in the commercial nations of Europe and America, there are less statistics concerning its intricate and involved hazards than concerning any other branch of insurance, unless it be personal accident and individual illness insurance. This is owing to the indisposition of companies to classify their experiences and make them public. There are so many fire insurance companies with such varying standards of management and there are so many jealousies between them that it has been impossible to get them voluntarily to so combine their statistical wealth as to furnish a thorough scientific basis for rate and reserve computations.

The empiricism of the present system, even when improved by the recent advance of schedule rating, is very evident when one deals with reserves. The system at present existing is to charge against a company one-half of its annual premiums as a reserve on the basis that the same has not been earned and will be needed to pay losses under unexpired policies. Suppose there are two companies, one of which is prudently charging a premium in excess of what it thinks will certainly be needed, the other imprudently charging one-half the premium demanded by the former company. According to the present system of computing reserves, the company charging adequate premiums will be made to show a

liability in proportion to the actual hazard just twice as large as the company charging inadequate premiums. It has thus happened several times that companies which started out on this rate-cutting program, have been figured out solvent for years, when by any sane system they would have been found insolvent almost from the day they began operations. The mere fact that companies which charge widely different rates, as has often happened, for precisely the same protection, is of itself evidence of the unscientific character of the rate-making of the present day; and the uniformity which generally exists is, on the contrary, no proof whatever that the rates are being scientifically adjusted. This uniformity is the result of combination and agreement; and wherever really effective measures have broken up these combinations and agreements, rates have fallen into chaos and steadily tended lower and lower.

Insurance is so important a feature of social economy that the State should no longer permit the foolish fears and jealousies of companies to prevent such a complete compilation of fire insurance statistics as will make it possible to change fire insurance from mere guess work to scientific prevision within the next two decades. This will, to be sure, involve a tremendous amount of labor, but the labor need not all be performed as the compilation goes on. The mere calling for a mass of information concerning losses on certain classes of risks in comparison with amounts insured and number of risks, and of losses by certain causes in each class, as compared with the number and amounts of risks subject to that cause of loss, would within a few years furnish such a body of information as would be gladly attacked by independent actuaries and statisticians. There is little doubt also that the companies, once the information has been drawn out of them, will see that their own interest lies in making the very best

possible use of it. Society is entitled to demand such publicity of that information as is conducive to the diminishing of fires, by removing the causes therefor, and also to the equitable adjustment of fire insurance rates.

REGULATIVE STATUTES.

LIABILITY INSURANCE.

Other forms of property insurance, such as tornado and wind storm insurance, hail insurance and such property insurance as is embraced in steam boiler insurance, may be passed over in this connection almost entirely without comment. These forms of insurance are at present so little developed that it would be difficult to prescribe regulative laws which would apply to them with any appositeness. Moreover, so far, no evils have appeared in connection with these lines of insurance that call for any special regulation. The principal thing at present requisite for them is enabling and fostering legislation.

On the contrary, as has hitherto been pointed out in these papers, several very serious evils have attended the rapid development of liability insurance. The nature of liability insurance is different from that of any other class of insurance in that it insures a man against the consequence of his own laches, negligence or tort. It is but one degree removed from insuring a man against the consequences of his own misdemeanor or crime. Naturally, therefore, it requires to be closely watched, if permitted at all, and to be sternly regulated, so that by means of it no man shall escape wholly the consequences of his own neglect or misconduct. It has also been pointed out that adjustments of losses under this form of insur-

ance, is a protracted and frequently heartless process. This is owing partially to the fact that the claimants are not really the customers of the insurance companies, but more especially to the circumstance that in almost every case there is room for dispute as to the liability of the insured, and consequently, of the insurance company. It has been seen in these papers, during the discussion of the adjustment of losses of fire insurance companies, that out of the possibility of disputing the validity of claims there has arisen an exceedingly pernicious system of compromising them. In liability insurance this has reached its worst possible stage. At this day, in consequence of the vast number of disputed claims and the enormous amounts involved, it is next to impossible for even the most expert to judge whether a company transacting this business is solvent or insolvent.

In former papers of this series, the opinion has been expressed that, if the matter could be brought to a test in the courts, it is altogether probable that this class of insurance would be abolished as in contravention of the settled principles of law, This is entirely owing to the circumstance that liability policies for the most part cover only claims for which the insured himself is liable. It is not believed that policies which would cover all accidents without regard to the liability of the person nominally insured, even though it should furnish him incidentally the protection which he desires, would be equally in contravention of sound legal principles. The reason for this is that while to insure the owner of a passenger elevator against the consequences of criminal carelessness on his part, would be clearly against public policy, as tending to increase such carelessness; on the other hand, to insure all persons entering and riding in his elevator against injury while therein, without regard as to whether he was liable or not because of neglect, would be entirely

consistent with public policy and this, even though incidentally it should relieve the owner from liability. The reason for this is apparent. It is in line with public policy, that citizens of the republic should not become a public charge because of disablement through accident; and that, whether they would become a public charge or not, they should not be deprived of the productive value of their time. Consequently, any form of insurance which would bring it about that the large number of persons who are injured every year in passenger elevators in the United States, should surely and fully be reimbursed for such an injury, would be a public benefit.

This principle applies with even greater force to the case of workingmen engaged in occupations that are dangerous to life and limb. In the construction of every great building, there is, in addition to the cost which appears in the outlay for materials and labor, a large cost of human life and of time of workingmen disabled temporarily by accident. At present this loss falls entirely upon the individual workingmen, except in such degree as they are able to prove that it was occasioned by the neglect of their employers. Consequently, it does not appear in the price of the building, although it is really a legitimate part of its cost. Now, if it could be brought about that every workingman engaged in the construction of these buildings was insured against such accidents without regard as to whether his employer is at present legally liable or not, the result of it would be that the cost of this insurance would be added to the price of buildings and the buyers of buildings would pay, as they should, this item of cost, viz: the cost in human life, and in loss of time through accident. Of course the result of this would be beneficial to society. It would also be beneficial to employers of labor, in that many claims which are now sustained against them would doubtless

not be then sustained. It would not be any great disadvantage, either, if the result of this class of insurance was completely to manumit employers from any liability, and if the only penalty which employers should be compelled to pay for criminal carelessness thus became a criminal penalty, consisting of fine or imprisonment, imposed by society for the wrong-doing of the employer.

There is a very evident tendency at this writing among liability insurance companies to shift their position from the mere insurance of employer against claims by employes to a more complete insurance of workingmen which also recognizes the workingmen as patrons of the companies and under which there will not be anything like so much liklihood of dispute as to the liability. The companies keenly feel the embarrassment arising from the large number of unsettled lawsuits which continually hang over them. Moreover, they find that the average employer who would be likely, if uninsured, to dispute the validity of claims against him to the last ditch, is, when insured, disposed to quarrel with the company for doing the same thing and in many cases to quietly offer all assistance possible to claimants in establishing their cases. Consequently, notwithstanding the fact that insurance companies generally have shrewder lawyers and sharper adjusters than the employers had before them, it constantly happens that claims are enforced against them which would never have been enforced against the employers, if not insured. It is well known also that the fact that the suit is really against an insurance company will influence the average juryman in determining his verdict. Consequently, it is becoming entirely plain to the insurance companies that it is to their interest to so extend this form of insurance as to cover not merely claims for which the employer is liable but also all accidents occurring while workingmen are at their posts.

This tendency should be encouraged by legislation. It is almost wholly beneficial; and, in its working out, will doubtless result in a more just distribution of the real costs of production. It is true that, at present, it is misused in many cases by companies, inducing employes to pay for this insurance and then rebating as a commission or otherwise to the employer a part or all of the premium for his liability insurance which is included in the policy. This evil perhaps cannot be avoided at this stage of the development of the business. The cost of this insurance should, as we have seen, be added to the price of the commodities purchased as it is properly a part of that price. To deduct it from the wages of the workingmen, is simply to distribute a cost which fell upon single individuals unjustly, so that it now falls upon the whole body of workingmen more or less evenly. This, while still unjust, is better than the old condition at any rate. Incidentally, it may work out in either of two ways, viz: by the workingmen obtaining a higher rate of wages because of this addition to their standard of living or by such modifications in the law and customs of the country as shall make this class of insurance obligatory, taxing the cost of it primarily upon the employer who would immediately shift it to the purchaser of the product, increasing by so much the price of the product.

REGULATIVE STATUTES.

STATE SUPERVISION.

The remaining branches of insurance have so little developed that it would be practically impossible to mark out any special lines of regulation to be pursued. These will have to develop as these branches of insurance themselves develop; consequently, we turn from the subject of regulative statutes to the related subject of the administrative officer, who is to do the regulating.

This official is known in different States by various names, such as superintendent of insurance, insurance commissioner and the like. The first officers of this character in this country were the insurance commissioners of the State of Massachusetts. There were two of them; and Elizur Wright, one of the most distinguished actuaries and philanthropists of our age, was one of these. This commission, as originally appointed by the legislature, was, perhaps, hardly expected to become permanent, but it was found that there was so much to regulate and that the interests involved were so important that it seemed requisite to continue the office. After several years the number of commissioners was reduced to one and Elizur Wright continued in this office for a long time, during which the lines that insurance supervision was to pursue, were pretty well mapped out.

At the first, necessarily a considerable measure of discretionary power was given the commissioner. The valuation conditions were originally adopted by the com-

mission in Massachusetts without legislative action. These were the now well known standards of the Actuaries' Table and 4 per cent. interest. The adoption of these standards was afterwards approved by the legislature; and, although Elizur Wright expected them to be merely temporary, their subsequent adoption by various State legislatures has made them the standards throughout the United States, although the seventeen offices' table was long ago eschewed in the land from which it came.

The duties of an insurance commissioner may be classified much as we have classified the legislation which he is to administer. Thus he has first to see that the conditions of the enabling statutes are complied with when companies are organized. It is also his business to see that the prohibitive and restrictive statutes are carried into effect. In doing this he should co-operate with the States' attorneys in bringing about the prosecution of offenders, and he should also promptly report to the proper prosecuting officer any dereliction under these statutes of which the penalty is forfeiture of charter or dissolution of the corporation.

But by far the most important office he has to perform is to give force and effect to the regulative statutes of the State, seeing to it that the business of insurance corporations is carried on as contemplated by the law. In order to accomplish this, it is, of course, part of his duty to familiarize himself with the affairs of companies by frequent examinations as well as by requiring periodical reports in which all statistics and facts necessary to a proper comprehension of the conduct of the companies' affairs should be drawn out. It is also a part of his duty in this connection to give to the public as land-marks to those who patronize insurance companies, such full statistical information relative to the condition and operations of the companies as will enable the

public not merely to decide concerning their relative strength, but also to decide concerning the relative desirability of their policies. For this purpose it will be necessary as to all companies issuing mutual or participating policies to call forth such information as will enable prospective purchasers to determine for themselves, as near as may be, the relative profitableness of investments in such policies.

The insurance commissioner should be a purely administrative and in no case a judicial officer. The frightful mismanagement of the New York department under several superintendents and the misconduct of many other State insurance officers may be traced clearly and unmistakably to the abuse of the discretion which was lodged in them. There is no reason why any such discretion should longer be lodged there.

The laws which they are to administer should be clear and mandatory. For instance, concerning the organization of new companies, the law should clearly state what is necessary in order to organize; and, if this is complied with, no discretion should be given to the insurance commissioner to refuse or delay the necessary authority. Moreover, in case he should thus refuse and delay, there should be some means of obtaining a hearing by the courts, reviewing his decision. In the same manner, it should be possible to call him before the courts to account for his conduct in any case of permitting companies to organize in violation of law, without complying with the necessary conditions or for the purpose of conducting an illegal business.

Concerning restrictive statutes, also, the commissioner should be held accountable in the ordinary courts of law for neglect, when supplied with the proper evidence, to refer these matters to the prosecuting attorneys for attention and to co-operate with them in enforcing the law.

In the same manner, again, whenever it is brought to the attention of the commissioner, with proper evidence, that companies are carrying on their business in a manner not in compliance with law, are exceeding their powers or are insolvent and are permitting their obligations to go to protest, it should be incumbent upon him to take action by referring the matter to the prosecuting officers and by co-operating with them in seeing that the law is complied with.

Concerning each of these things, there should be no discretion; and any attempt on the part of the commissioner to exercise discretion should, when it comes to the attention of a court of record, be sufficient reason for a suspension from office by that court, until all the facts are considered and his guilt or innocence determined.

Moreover, the companies should themselves have access to the courts with a speedy hearing, whenever they consider that the decisions of the commissioner are not in accordance with law and are injurious to them and their interests. This right of appeal to the courts should also be granted to companies from without the State whether they have already been admitted or not. The abuse of the discretion unfortunately granted them by certain commissioners during recent years should be sufficient evidence of the necessity for such an appeal, even though the very nature of the case did not make it desirable.

At the present time the commissioners of most States have such discretion that they can, with comparative impunity, permit companies to be organized to transact illegal business, may wink at constant violations of the restrictive and prohibitive statutes of the State and may also fail to carry out the provisions of the regulative statutes. This comparative impunity arises from the fact that the only way to reach these officers ordinarily, is

through an impeachment. Indeed, in at least one State, it is not sure that there is any means of reaching him. The legality of an impeachment has been itself impeached and it is doubtful whether it would hold at law. The result of such legislative neglect is that, during his term of office, the insurance commissioner is the most irresponsible officer in the whole roster.

When there is added to this absolutely unnecessary discretion the further sole power to decide whether receivership proceedings shall be begun against insurance corporations, it must be conceded that the power to abuse the office against the interests of the people is magnified to an extraordinary degree. Of course, the power to move for a receiver should be lodged in the insurance commissioner, but that this power should be exclusive is to deprive every judgment creditor and in fact all parties at interest of the most valuable means of self-protection. In no case has this power failed to be abused and to be exercised, not for the benefit of the public but for the benefit of rascally managers who have lined their own pockets while the indebtedness of the companies intrusted to their care is piled up to many times the resources. Establishment of insurance supervision is not undertaken for the purpose of depriving the people of those means of protecting themselves which they already possessed, but is certainly for the purpose of adding to the imperfect means which they already possessed, the additional safeguard of a watchful public officer with better access to sources of information than they can possibly have. This purpose is completely defeated when the commissioner is vested with such authority that people who have been injured by the misconduct of companies are compelled to appeal to him for redress, without having the right to compel him to take action in their behalf.

REGULATIVE STATUTES.

STATE INSURANCE.

Insurance is essentially a community function. It is not merely to the interest of an individual, for instance, that his property should not be destroyed by fire and he thus be reduced to poverty, but it is also to the interest of the community that this should not take place. The community is interested in seeing to it that no individual is deprived of his property except as a result of his misconduct. The burden of supporting those individuals who are brought to pauperism by the loss of property inevitably falls upon the community. Moreover, the pauperization of individuals results commonly both in the deterioration of their own characters and also in damage to their posterity, all of which things are serious injuries to the community.

The state of affairs which would be most healthful in a community would be that each individual was certain to receive the exact reward for his own efforts, without diminution through bad luck or increase through good luck. In a community where such a state of affairs existed, the incentive to right action would on the whole be precisely sufficient and the incentive to wrong action would not exist at all. Insurance is an effort to equalize conditions and to bring about this ideal state of affairs. At present, having been only in the earlier stages of evolution, it is of course imperfect; but it is doing a good work in that direction. As now designed, it is only roughly equalizing conditions, and is in fact aimed merely to ward off most disastrous losses, such as by fire, wind-storm or other very destructive elements. Moreover, not every individual is protected by insurance. It has grown, as it perforce must have grown, through its earlier stages as a purely voluntary system, and by that means has convinced by far

the most of the wise and prudent citizens of civilized countries of its merits and desirability. No man of intellect thinks of an insurance premium as a gratuity or contribution for the benefit of others; the value of protection, even though no loss occur, is now generally understood.

What is not yet quite understood is that the necessities of the community do not really permit that insurance should be a voluntary affair. For the purpose of bringing about conditions most conducive for its well-being, the community is warranted in insisting that every individual should contribute his portion of the net loss by ill luck, in consideration of protection to himself. It is quite as much the business of the community to see to it that no individual receives more than the reward for his efforts in the form of good fortune, as it is to see that individuals are not crushed by misfortune. The fact is that most strokes of fortune are two-faced, what is good luck to one individual being bad luck to his neighbor. Thus, the destruction of a large part of any commodity would result in the increase of the price of what remains, this being ill fortune to those who possessed the part that was destroyed and at the same time good fortune to those who possessed the part that was not destroyed. From this homely illustration, it will be observed that the fortunate would not really contribute anything for insurance out of what would have been their reward if no part of the commodity had been destroyed. What they really would do is to contribute the benefit which would have accrued to them through a good fortune that was the ill fortune of their neighbor. Of course there is a real loss to the community in any case, the community receiving less of the commodity for the money it pays.

Outside of these general principles, which seem to conclusively demonstrate that insurance is really a community or State function, and that as soon as the persons compos-

ing the community are educated up to the point of tolerating it, it should become compulsory, there are still other considerations why some forms of insurance especially should be taken over by the State. For instance, there are forms of insurance which are so general in their application and so difficult to apply, that anything like adequate arrangements through private initiative are practically impossible. For example, the most serious losses to individuals come under the category of personal insurance, including illness, accident and the infirmities of old age. It is almost impossible for private companies to cover these hazards with any such completeness as to serve the purpose of the community. In consequence the community is already engaged largely in this form of insurance without having the advantage of its being undertaken in a business-like manner. Instead, it is put in the form of charity, which it is not at all, or at least ought not to be at all. Our hospitals, almshouses and public institutions of that character are all of the nature of insurance; but, instead of being wholly beneficial, as insurance is, they are really deleterious to the best interests of the community. The distinction is that he who receives a benefit from insurance receives that which is his right and not charity. The difference between a man living through a decrepit old age on an annuity due him from an insurance company and a man equally decrepit living in an almshouse upon the grudging charity of the community is all the difference between right social conditions and wrong social conditions; and we have already reached such a point in statistical information and actuarial skill that it would not be impossible to devise a system of personal insurance which should cover from before one's birth till after one's death so completely that no individual in the community could fail to receive a fair reward for his efforts, with all the elements of ill fortune, including even the ill fortune of a bad

heredity, equalized and thus shut out of the problem.

Outside of this form of insurance, which, so far as I can see, can never be undertaken with any prospect of great success except by the action of the whole community, there are other forms which can be successfully carried on by private initiative but which in all probability could be conducted in a far more efficacious and economical manner by the State. One of these is fire insurance on buildings. The State could, by appraising the value of buildings and collecting a compulsory fire tax adjusted roughly according to the hazards, give a very much more economical fire insurance than is now given by companies. It would probably wipe out the hazard of over-insurance on buildings completely, and would doubtless also reduce incendiarism to a minimum. The expense of collecting such a tax of course is nothing compared with the present expense of collecting fire insurance premiums. This system is in successful operation in some countries already.

Life insurance, which is conducted by the regular companies of the United States at so extravagant a rate of expense, could probably be carried on by the State to great advantage either upon the voluntary system or upon the compulsory system. An example of the success of the system of voluntary State life insurance is given in the experience of the life insurance department of New Zealand, which has, in competition with other excellent companies, built up resources of more than $10,000,000. It is also now doing more than one-half the new business annually transacted in the province. There has been no large experiment in compulsory State life insurance; but the New Zealand department has constructed the best mortality table ever derived from statistics of the general population, which shows beyond a question that on the compulsory plan it could insure all of the people of that colony as they reach the age of 20 years at a net cost to each of far

less than it now costs on the volunteer plan, which is open to selected lives only. It will be observed from this that the price which we pay for permitting a part of the people who are insurable under present standards to go without insurance or to lapse insurance at will is to be unable to protect the families and dependents of those who are not up to the standard now required for insurance. It is very evident, therefore, that the voluntary system of insurance does not really serve the purpose of a community in that it still leaves a large portion of the people exposed to disaster through inability to obtain insurance, and another large portion exposed to disaster through their obstinate refusal to insure. And when it appears, as it does from this New Zealand mortality inquiry, that the consequence of this is that those who do insure pay a higher price for it than needs to be paid, it is clear that it would be the part of wisdom for a civilized community to undertake insurance as a public monopoly and on the compulsory plan.

It must be remembered, however, in connection with these considerations, that there is nothing inherent in the plan of State insurance that will certainly make it succeed. Success will depend principally upon whether the ideas of the people concerning insurance have evolved to the point of a very general appreciation of its value. With a strong public opinion supporting it, and with adequate scientific investigation of the necessary data before undertaking it, there is little question that State insurance would succeed on the compulsory plan. But, wherever started under misapprehension of its real character, without sufficient actuarial examination of what is possible and without any real demand for it on the part of the people, it would almost certainly score a failure. Notwithstanding which, there seems to be little question that it is the goal toward which the evolution of both insurance and the community is speeding.

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